Flamingo Hilton-Laughlin *and* United Steelworkers of America, AFL–CIO–CLC. Cases 28–CA–12260 and 28–RC–5105

July 29, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On April 25, 1996, Administrative Law Judge David G. Heilbrun issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed a brief in support of the judge's decision and an answering brief. The Charging Party/Petitioner filed a cross-exception and a brief in opposition to the Respondent's exceptions and in support of its cross-exception.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and cross-exception and has decided to affirm the judge's rulings, findings,[1] and conclusions,[2] as modified below, and to adopt the recommended Order as modified.[3]

We adopt, with one exception, the judge's decision finding violations of Section 8(a)(1) and (3) of the Act.[4] The judge found that William Sherlock, the Respondent's then new president, unlawfully promised benefits in his election-eve speech to employees on July 4, 1993. The judge found a violation of Section 8(a)(1) based on the following testimony by Sherlock:

> Basically I said that I was new to the property and I realize that the only management style they had seen was Gary Gregg's [the former president's] for better or for worse, and I would like to be evaluated and judged on my management style and I would like to see them have a chance to see that management style.

In the judge's view, these comments by Sherlock were to be linked to earlier statements about benefits set forth in a memorandum issued to employees by John Kosinski, the Respondent's director of human resources, on June 22, 1993. Relying on the Board's decision in *Reno Hilton*, 319 NLRB 1154, 1156 (1995), the judge found that, in the context of Kosinski's June 22 memo, Sherlock's ''plea for a chance to do more'' was an impermissible implied promise of benefits.

The Respondent, citing *Hyatt Regency Memphis*, 296 NLRB 259, 269 (1989), argues that Sherlock's comment about employees giving him ''a chance'' was a lawful general request by a new president and was not connected to any general or specific improvements in the employees' working conditions.

We find merit in the Respondent's argument. Unlike the judge, we find that a connection between Kosinski's June 22 memorandum and Sherlock's July 4 statements is irrelevant because there was no claim or allegation by the General Counsel that the June 22

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The judge found separate units of hotel employees and slot department employees appropriate for purposes of collective bargaining within the meaning of Sec. 9(b) of the Act. The Respondent contends that the floor person classification was improperly included in the slot unit because the floor persons are statutory supervisors. We agree that the floor persons are not supervisors, but we do not rely on the judge's consideration of the ratio of supervisors to employees.

We agree with the judge that the Respondent violated Sec. 8(a)(1) by creating an impression among employees that it favored the Culinary Union over the Steelworkers. In so doing, we note that simply expressing, in a noncoercive manner, a preference for one union over another in a multiunion election is not unlawful. See *Amboy Care Center*, 322 NLRB 207 (1996). Here, however, the Culinary Union was not engaged in a campaign to organize the Respondent's employees; and, more importantly, the Respondent did not simply express a preference for the Culinary Union. Its supervisors and managers coercively stated that the Culinary Union had money with which it could pay thugs to beat up employees, actively supported the Culinary Union by attempting to distribute its literature to employees, and, while unlawfully promising to ''fix all the problems'' within a year, stated that if it failed to do so, the employees could select another union such as the Culinary Union. Moreover, the Respondent repeatedly made unlawful threats of adverse consequences that would ensue if the employees chose to be represented by the Steelworkers. In the context of those statements and actions, we find that the Respondent unlawfully indicated a preference for the Culinary Union.

Member Higgins does not agree that the Respondent violated Sec. 8(a)(1) by creating the impression that it favored the Culinary Union over the Steelworkers. An employer has an 8(c) right to express such a preference. See *Amboy Care Center*, supra. The fact that the Culinary Union was not actively campaigning cannot take away the 8(c) right of the Respondent to express its view that the Culinary Union is a better union than the Steelworkers. Further, an employer is permitted to distribute literature in favor of its position on an organizational issue. *NLRB v. United Steelworkers (Nutone Inc.)*, 357 U.S. 357 (1958). However, the Respondent's suggestion that the Culinary Union would hire ''thugs'' to beat up employees who did not support that union was coercive within the meaning of Sec. 8(a)(1).

[2] The judge concluded that the Respondent violated Sec. 8(a)(3) and (1) by unlawfully restricting the work area movement of union supporter Wilma Miller. We agree with the judge that the reasons advanced by the Respondent for this restriction were pretextual and that the judge's finding of this violation is consistent with *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). See *Limestone Apparel Corp.*, 255 NLRB 722 (1981).

[3] The judge did not include broad injunctive cease-and-desist language in the recommended Order. In view of the Respondent's repeated violations of the Act and the egregious nature of those violations, we find that a broad injunctive order is warranted. *Hickmott Foods*, 242 NLRB 1357 (1979). We shall also modify the judge's recommended Order in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

[4] We note that there were no exceptions to the judge's dismissals of the following complaint paragraphs: 8(h); 9(a)–(j); 9(l); 10(a)–(f) and (j); 10(h)–(k); 10(s)–(u); 10(w); 10(jj); and 11(c)–(e).

memorandum contained any unlawful promises or otherwise violated the Act. We also find our decision in *Reno Hilton* to be distinguishable from this case. In that case, there was a stronger implication that the employer was promising benefits. The president himself reminded employees about benefits already given (in one instance, unlawfully), and his plea for a chance to ''deliver'' was, at least in that context, more suggestive of a promise of benefits than Sherlock's more general request for a chance to demonstrate his ''management style.'' We, therefore, find that Sherlock's statement was protected by Section 8(c) of the Act, and we shall reverse the judge and dismiss this allegation.

The judge found that the violations committed by the Respondent in this case warranted the imposition of a bargaining order remedy for each unit. See *NLRB v. Gissel Packing Co*., 395 U.S. 575 (1969). In affirming this remedy, we wish to highlight two points addressed by the judge in his analysis. First, we note that the Respondent's unlawful screening of job applicants, which began during the preelection period, continued for many months after the July 6, 1993 election, even in the face of the 10(j) injunctive order issued by the United States District Court for the District of Nevada on July 29, 1994. Second, the judge referred to ''corporate Hilton executives'' who were involved in the Respondent's unlawful campaign against the Union and are still employed by the Respondent. In this connection, the record shows that Jim Anderson, Hilton's corporate senior vice president, labor relations and personnel administration, played a major role in orchestrating the Respondent's unlawful campaign against the Union. We agree that Anderson's continued employment is a factor undercutting the Respondent's management turnover defense to the imposition of a bargaining order here.

However, we do not adopt the judge's reasoning in two respects. First, the judge ''discount[ed] the effects of [the] one-on-one type threats, solicitation, or interrogation'' present in this case. We find that this approach is a misapplication of *Gissel* principles because it is well established that the Board considers *all* the unfair labor practices committed by the employer in determining whether a bargaining order is appropriate. We also note that these threats, solicitations, and interrogations did not always involve a single employee and supervisor. Furthermore, they mirror and reinforce the Respondent's other unfair labor practices which were targeted at and affected practically every unit employee.

Second, the judge began his analysis of this issue by stating that the context for the Respondent's unlawful campaign was the ''fear-inducing'' and ''relentless'' negative messages about unions delivered by the video presentations conducted by the Respondent's labor consulting firm. We note, however, that there were no exceptions to the judge's findings that these video presentations were lawful. Therefore, we do not rely on the judge's analysis to the extent that he imposed a negative connotation on the Respondent's lawful video presentations.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Flamingo Hilton-Laughlin, Laughlin, Nevada, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(z).

''(z) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.''

2. Substitute the following for paragraphs 2(b) and (c).

''(b) Within 14 days after service by the Region, post at the Respondent's facility copies of the attached notice marked 'Appendix.'[5] Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 28, 1993.

''(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.''

3. Substitute the attached notice for that of the administrative law judge.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT grant benefits that would not otherwise have been granted during the organizing campaign of United Steelworkers of America, AFL–CIO–CLC; however, we will not withdraw, vary, or abandon any wage increase or other benefits we may have granted to employees.

WE WILL NOT unlawfully change the health insurance coverage of employees by providing additional health insurance coverage options to our employees, lowering the health insurance premiums required to be paid by our employees, and changing our employees' health insurance coverage by providing an additional health insurance open-season period to our employees.

WE WILL NOT unlawfully increase the wages of our employees retroactively.

WE WILL NOT unlawfully implement a complaint resolution procedure.

WE WILL NOT unlawfully change the scheduling and assignment of our cocktail servers by instituting a seniority-based shift and assignment policy.

WE WILL NOT unlawfully increase the guaranteed gratuities of our bell employees.

WE WILL NOT maintain an application review process designed to screen out those applicants for employment whose employment applications suggest the applicant's affiliation with Steelworkers supporters or likely support and sympathy for a labor organization.

WE WILL NOT unlawfully solicit employee complaints and grievances and promise, directly or by implication, to resolve them, increase benefits, and improve terms and conditions of employment if employees reject the Steelworkers as their bargaining representative.

WE WILL NOT threaten our employees with violence at the hands of a labor organization other than the Steelworkers to discourage their support for the Steelworkers.

WE WILL NOT create the impression among our employees that we support and favor a labor organization other than the Steelworkers.

WE WILL NOT prohibit our employees from talking to other employees about the Steelworkers.

WE WILL NOT coercively interrogate our employees about their union sympathies or activities.

WE WILL NOT threaten our employees with loss of benefits and reduction of wages if they select the Steelworkers as their bargaining representative.

WE WILL NOT threaten our employees with loss of any announced pay raise if they select the Steelworkers as their bargaining representative.

WE WILL NOT threaten our employees with loss of employment opportunities because their photograph or name appears in a Steelworkers' pamphlet.

WE WILL NOT threaten our employees that they will have difficulty resolving work problems with their supervisors because the Steelworkers was selected to represent them.

WE WILL NOT verbally threaten our employees that they will not be hired by other casino hotels in Laughlin because of their activities on behalf of the Steelworkers.

WE WILL NOT inform our employees that they will not be allowed to work until they begin to wear proemployer buttons or replace their prounion buttons with proemployer buttons.

WE WILL NOT threaten our employees in writing by implying that other casino hotels in Laughlin will blacklist them because of their activities or support for the Steelworkers.

WE WILL NOT threaten our employees in writing with loss of future job opportunities by implying that other casino hotels in Laughlin will be less likely to hire them because of their activities or support for the Steelworkers.

WE WILL NOT verbally threaten our employees that we will blacklist them because of their support for the Steelworkers.

WE WILL NOT threaten unspecified reprisals against our employees by implying this would be done because of their support for the Steelworkers.

WE WILL NOT threaten our employees with discharge because of their support for the Steelworkers.

WE WILL NOT inform our employees that it would be futile for them to support the Steelworkers.

WE WILL NOT unlawfully restrict the work area movement of our employees in and around the facility.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the National Labor Relations Act.

WE WILL, on request, bargain in good faith with the Steelworkers, and put in writing and sign any agreement reached on terms and conditions of employment

for our employees in the ''hotel unit.'' The hotel unit is appropriate for collective bargaining, and consists generally of:

> All full-time and regular part-time uniformed employees, retail sales employees and plant clerical employees employed at our Laughlin, Nevada property in the housekeeping, food and beverage, warehouse receiving, front desk and group processing, bell, valet parking, retail sales, and cashier departments, *but excluding* all casino employees, administrative employees, office clerical employees, confidential employees, show room employees, human resources department employees, property operations employees, security employees, surveillance employees, guards and supervisors within the meaning of the National Labor Relations Act.

WE WILL, on request, also bargain in good faith with the Steelworkers, and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the ''slot unit.'' The slot unit is appropriate for collective bargaining, and consists of:

> All slot department floor persons, money runners, change persons, carousel attendants, booth cashiers, slot mechanics (techs), and slot mechanic (tech) trainees employed at our Laughlin, Nevada property, *but excluding* all other employees, office clerical employees, guards and supervisors within the meaning of the Act.

FLAMINGO HILTON-LAUGHLIN

Paul R. Irving, Esq., for the General Counsel.
Joseph E. Herman, David D. Marshall, and *Craig E. Hunsaker, Esqs. (Morgan, Lewis & Bockius)*, of Los Angeles, California, for the Respondent.
Dennis M. Sabbath, Patricia McAllister Brame, and *Martha D. Macomber, Esqs. (Sabbath & Mehesan)*, of Las Vegas, Nevada, for the Charging Party.

DECISION

STATEMENT OF THE CASE

DAVID G. HEILBRUN, Administrative Law Judge. These consolidated cases were tried in Bullhead City, Arizona, on 67 days of hearing that spanned May 17, 1994, to May 10, 1995. Case 28–RC–5105 began as a representation petition filed by the United Steelworkers of America, AFL–CIO–CLC on March 26, 1993. Active proceedings on this petition were suspended in late October 1993. Ultimately the Acting Regional Director for Region 28 consolidated this case, because of common issues existing between it and the controlling unfair labor practice case here.

Case 28–CA–12260 originated as an unfair labor practice charge filed October 28, 1993, by the United Steelworkers of America, AFL–CIO–CLC (the Union) on which a complaint issued February 25, 1994. Primary issues in this case include whether the Flamingo Hilton-Laughlin (Respondent) unlawfully (1) granted benefits to employees that improved their terms and conditions of employment, and (2) interfered with, restrained, and coerced employees in the exercise of the rights guaranteed by Section 7 of the National Labor Relations Act by extensive verbal and nonverbal acts and conduct in violation of Section 8(a)(1) of the Act. A third primary issue of the consolidated proceeding depends on findings and conclusions of law in regard to the alleged unfair labor practices. This is whether Respondent's alleged acts and conduct have been of such a serious and substantial character that a bargaining order should issue for two separate and claimedly appropriate units of employees, in which the Union had assertedly gained majority representation by employee expression for such representation on authorization cards.

On the entire record, including my observation of the demeanor of witnesses, and after considering briefs filed by the General Counsel, Respondent and the Union, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is a Nevada corporation with its office and place of business in Laughlin, Nevada, where it is engaged in the hotel and gaming industry. During the 12-month period ending October 28, 1993 the Respondent, in the course and conduct of its industry operations, derived gross revenue in excess of $500,000, while during that same annual period purchasing and receiving products, goods, and materials valued in excess of $50,000 directly from outside the State of Nevada. On these admitted facts I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. I also find, as is further admitted, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Locale*

The setting of this case is a small, twin city-like populated area, connected by a short bridge over the Colorado River. Such area is situated approximately 100 miles southerly from Las Vegas. The town of Laughlin, Nevada, is known for its group of large casino hotels, that all but one stand in near-adjoining fashion along about a mile of riverfront. Laughlin also has business, civic, and residential districts, mostly inland from the showy line of casino hotels.

Bullhead City is a longer established river community on the Arizona side, with typical commercial features and housing. A number of yet smaller population centers run south from Bullhead City, and there are other nearby towns such as Kingman about 30 miles to the east. These communities, along with the fundamental pairing of Laughlin and Bullhead City, comprise the general labor market area in which this case is set.

B. *Entities*

1. Union (the Petitioner and the Charging Party)

United Steelworkers of America, AFL–CIO–CLC is a major international union. For its part this consolidated case was generated with organizing objectives under auspices of District 39 located in Las Vegas. Occasionally a reference arises to Las Vegas-based Local 711A; however, the essential entity here is the international union in its full institutional sense.

2. Company (the Employer and Respondent)

The Flamingo Hilton-Laughlin is owned by Hilton Hotels Corporation (Hilton), headquartered in Beverly Hills, California. Respondent is one of five Hilton-owned casino hotels within Nevada, including two in Las Vegas and two in Reno. These five have been administratively termed the Gaming Division for identifying business image. The structuring had persons of centralized authority in Las Vegas, and nomenclature to collectively characterize these five properties varied by Hilton's changing choice of terminology.

In physical terms Respondent is a twin-towered casino hotel, with typical facilities and amenities of the industry. It opened in August 1990, and employs over 2000 persons for its 24 hours a day operations. Its principal departments are casino operations, the guest hotel, and food and beverage facilities comprised of numerous eating and drinking locations throughout the property's public areas.

C. *Descriptive Preliminaries*

1. Chronology

a. *Gross chronology*[1]

The Union's organizing campaign began in January (1993). Authorization cards were then solicited and obtained in a variety of ways. In late March the Union filed its representation petition for a unit basically consisting of hotel, food and beverage, and slot machine operations employees. It was docketed as Case 28–RC–5105. Proceedings on this petition ensued until a Decision and Direction of Election issued on June 9. This action by the Acting Regional Director severed and excluded slot department employees from the petitioned-for unit. A secret-ballot election was conducted on July 6 among the approximately 1000 employees of the unit found appropriate. The tally of ballots showed 389 for the Union with 495 against it, plus a small, indeterminate number of challenged ballots. The Union filed 21 timely objections to conduct allegedly affecting results of the election, and these objections were heard during various dates in September and October. On October 28 the Union filed the unfair labor practice charge docketed as Case 28–CA–12260. Because of this charge a report on the Union's objections never issued.

b. *Detailed chronology*

The Union's effort began when two officials from Las Vegas met during the evening of January 6 in a Laughlin home with about a dozen of Respondent's employees. A major open house event was planned that evening, and soon held on January 25 at a VFW hall in Bullhead City. The open house turnout on January 25 was an estimated 150–200 people during the publicized day-long time for participation. A considerable number of authorization cards were obtained on that date. This spurred extensive card signing by employees in the weeks immediately following, which added further to a token number already obtained before the open house. Also, by letter dated January 26, a union official informed Respondent's chief executive that an organizing drive had begun, and 18 named employees had been appointed as the ''in-house organizing committee.''

Officials of the Union returned again to Laughlin on February 8. They met at a hotel with active employee supporters to assess extent of interest among targeted employees in the hotel, food and beverage, and slot departments, and to conduct training of in-house organizers. An effort was also being mounted at reaching out to Hispanic employees, so to this end a fish fry was done on February 23 at a public park in Bullhead City. Here Spanish-speaking communication was a special feature of the Union's continuing effort to obtain an accumulation of signed authorization cards. By this time the Union had opened an office on Bullhead City's main highway for the organizing campaign at Respondent, and had started to conduct weekly meetings for its in-house organizing committee and, separately, for interested employees of the targeted unit.

About March 1, Respondent's chief executive was replaced in a lateral transfer of the person previously in overall charge at the Reno Hilton casino hotel. The new chief executive swiftly undertook purposeful orientation regarding the Laughlin property. This entailed immediate meetings with his predecessor and his executive committee of department heads, along with familiarization as to the new surroundings in general and the facility, its work force, and its middle management staff of supervisors in particular. The overlap of chief executives lasted only 1 week, so the replacee viewed this portion of his early familiarization as a ''5 day orientation.'' It included his introduction at a meeting for all salaried employees on March 2. This unique early emphasis subsided soon, and daily management matters along with scheduled executive committee and staff meetings became the norm for him.

Throughout February and March, the Union had continued occasional mailing of a standard notification letter to Respondent's chief executive, listing additional employees as appointed to the in-house organizing committee. The last in this series of letters was dated March 26, and addressed, as with all preceding it, to the departed chief executive by name. On March 26 the Union also filed its representation petition and many signed authorization cards as a supportive showing of interest. By letter of that same date, however, in this instance addressed to Respondent's director of human resources, the Union also claimed an ''overwhelming majority'' of employees in the principally targeted hotel, food/beverage, and slot operations had authorized it for purposes of collective bargaining. This letter requested recognition and a response from the company.

Respondent made no reply to the Union's correspondence, but did promptly mount a campaign of its own against unionization of this large employee segment. A labor consulting

[1] All dates and named months hereafter are in 1993, unless indicated otherwise.

firm was engaged for intensive activity, and planning was developed for auxiliary use of antiunion video presentations, written materials, partisan insignia, and supervisory training. As this was being done, hearings on the petition took place during the period April 15–30.

Around May 1, certain beneficial changes were made in the health insurance coverage available to employees. In early June the hourly rates of several hundred employees were increased in a broad upward adjustment of compensation. Late in June Respondent notified employees that a complaint resolution procedure of general application would be instituted in the near future. The months of May and June also involved other actions of Respondent which are asserted in the complaint to have been unlawful. These several distinct, and claimedly impermissible, actions are alleged (1) work movement restriction of one specific employee, (2) basic change to the work scheduling practice of cocktail server employees, (3) increased gratuities for bell employees, and (4) improved ventilation comfort at beverage work stations. There are also numerous other allegations in the complaint.

As the 3 months and more of late March into early July passed, the Union continued extensive campaigning. Weekly meetings at the Bullhead City hall went on, solicitation of new authorization cards was done, former card signers were recontacted, countering literature and insignia were introduced, and emphasis on outreach to Hispanic employees was increased.

On July 4 management assembled consecutive groups of employees throughout the day to experience a final pro-Company video and preelection speech by the property's chief executive. By this time the election had been structured to involve only those within the unit found appropriate by the Acting Regional Director in his Decision and Direction of Election of June 9. Briefly stated, this was to be the full-time and regular part-time uniformed employees, retail sales employees, and plant clerical employees employed in Respondent's housekeeping, food and beverage, warehouse receiving, front desk and group processing, bell, valet parking, retail sales, and cashier departments.

Respondent had timely requested review of the Decision and Direction of Election on June 22. This request was denied by Board Order dated July 6, on the basis that no substantial issues warranting a review had been raised.

2. Key individuals

a. *Union*

Jerry Mongello was the lead union official when this organizing drive began. At the time in January he was a staff representative of District 39, with servicing responsibilities for Las Vegas Local 711A and two other Steelworkers locals in California. The originating tip that a Local 711A member's relative in Laughlin wanted to explore representation by the Steelworkers at the Flamingo Hilton-Laughlin was passed by the local's recording secretary, Jack Dix, to Mongello for followup.

Mongello chiefly spoke for the Union at the small gathering in a home on January 6. He negotiated reciprocal commitments with the activist employees in attendance that night, which led to the Steelworkers undertaking this organizing drive. Mongello required that the small core group spearhead an acquisition of proof that workers of Respondent showed sufficient interest in representation by the Steelworkers. For their part these few activist employees successfully obtained an assurance that the Union would see the campaign through to a completion, and not simply ''walk away'' as they had just experienced with another labor organization.

Mongello was a prime and conspicuous figure at the open house of January 25, he signed the series of correspondence to Respondent spanning letters dated from January 26 to March 26, he attended key meetings during that same period, he was overseer of the authorization card acquisition process, and he determined the timing of when to file a representation petition and what extent of supportive showing of interest should be provided from the pooled accumulation of signed authorization cards at the time. During April Mongello was relieved as coordinator in charge of the campaign by Robert Callahan, a Pittsburgh, Pennsylvania-based assistant to the Steelworkers organizing director.

Roberto Fernandez has been a part-time organizer for the Union over many years, and was assigned out of District 39 in mid-January to assist the new campaign. Fernandez is bilingual in Spanish and English. He spent the first several days of his assignment to Laughlin in random scouting of the locale, the Flamingo Hilton-Laughlin property, and the employee mix. Fernandez became acquainted with a few Hispanic employees, and participated in planning the open house of late January as well as the February 23 fish fry.

Manny Armenta is an official of the Union, and also bilingual in Spanish and English. Armenta was assigned to aid the organizing campaign for only the last few days before the election. Although he did not testify during the trial, Armenta was formally designated by union counsel as the person to assist during trial progress while a sequestration order was in effect from June 9, 1994, onward. In this capacity Armenta attended a substantial portion of the entire trial, an overall presence that I estimate as 90 percent of the time.

b. *Company*

John Kosinski was first employed by Respondent in February 1992 as the assistant director of its property operations department. On July 20, 1992, he became Respondent's director of human resources, a field in which he had prior experience. Respondent's counsel formally designated Kosinski as the main person to assist during trial, and in this capacity he was present approximately 75 percent of the time. This estimate includes the 16 days during which he was also a witness as called by both the General Counsel and Respondent.

Joan Hosler is the assistant director of human resources, a position acquired in November after progressive advancement in the department following her original hire in February 1990. For the 2-year period of late 1991 until November her position was human resources manager. Hosler was also frequently the alternate designee as Respondent's trial assistant when Kosinski was testifying or otherwise intermittently absent from the hearing. At times, and with tacit acquiescence by the General Counsel and the Union, both Kosinski and Hosler remained in the hearing room during the testimony of certain witnesses.

William Sherlock is the person transferred early in 1993 by Hilton to become president of Respondent. Sherlock had

an extensive prior career at several Hilton properties nationwide. He then relocated to Nevada from 1988 onward. Aside from his stint for approximately 1 year as president of the Reno Hilton from where transferred, he had immediately prior to that held an executive position at the Flamingo Hilton-Reno for 3 years. Sherlock arrived at the Laughlin property to assume his new position on February 28; however, it had been known for many weeks before this in the Hilton hierarchy that he would soon head Respondent.

3. Overview

a. *Union's basic objective*

The Union's basic objective was to acquire a quite substantial showing of interest among the employees it hoped to organize. Following this, the plan was to present a provable claim to Respondent of having majority support for union representation and acquire voluntary recognition from the property. During this entire process the Union intended that its core in-house employee organizers be trained in correct authorization card solicitation techniques so as to preserve the integrity of cards obtained.

b. *Company's basic objective*

Respondent's prevailing outlook based on Hilton policy was to avoid unionization if possible. However little was done in tangible reaction to the Union's original written notice of activity, as expressed in Mongello's letter dated January 26 to the property's then president.

Once the recognition demand appeared, Respondent engaged a Los Angeles law firm with labor relations expertise, and chose labor relations consultants to assist in opposing the Union's goals. The prospect of voluntary recognition as authorized in Section 9(a) of the Act was never considered to be an option.

c. *Union's specific activities*

Mongello and his colleagues had provided blank authorization cards to employees in attendance at the meeting on January 6. From then until the open house these employees carried out a minor amount of card solicitation. During this intervening time Fernandez also cultivated Hispanic employees and solicited their completion of cards. However the first main impetus to the organizing campaign occurred as a result of the open house on January 25.

Mongello addressed numerous groups of the employees turning out for this event throughout the day. Beyond explaining a belief in beneficial aspects of union representation, he also emphasized that cards employees would be asked to sign were only to authorize representation and not to join the Union as a formal member or for any other purpose.

A check-in table was in use at the open house, staffed by in-house organizing committee members. Alice Serebrenicoff was chiefly present at the table throughout the day, being principally assisted by Marilyn Hall (LaFollette) and Trudy Bryant. They, along with other in-house committee members, also circulated among the day-long stream of attendees to solicit signatures on authorization cards. Fernandez and other Spanish-speaking supporters of the Union provided translations, as necessary, of what group speakers were presenting and to facilitate individual conversations.

Mongello had approached the Laughlin situation with a policy that he would need 65 percent or more of the employees in any desired bargaining unit giving signed authorization before he would present a recognition demand. The turnout and demonstrated response at the open house satisfied Mongello that the campaign should continue to go forward. The fish fry especially for Hispanic employees on February 23 followed much the same format, except that Spanish language communication was emphasized extensively to explain the Union, what it offered, and the significance of authorization cards being solicited.

From the original group of 18 named in-house organizing committee members, only 5 became particularly active, or at least successful, in obtaining signed authorization cards. These were Hall (LaFollette), Serebrenicoff, Cheleen Morgan, Bryant, and Virginia Mahliot. Of the 28 persons additionally named to the in-house organizing committee by Mongello's advisory letters to Respondent subsequent to January 26, only James Flanagan, Wilma Miller, Martha Montoya, and Edgar Galaviz were comparably known to be successful in obtaining an appreciable number (10 or more) of signed cards.

However certain employees not named in any of Mongello's letters testified in relation to their successful solicitation of an appreciable number of cards. These individuals were Ralph Durbin, Felix Rodriguez, Crystal Banda, and Patricia Black. Numerous other employees also testified to receiving less than 10 signed authorization cards, or in relation to their own signed card. The strategy of obtaining a quite substantial showing of interest was buttressed throughout the entire campaign by Fernandez' constant efforts at persuading employees, in their homes and elsewhere, to sign authorization cards. He continued to place particular emphasis on successfully doing this among the Hispanic employees.

During the February-March period weekly meetings at the Union's Bullhead City hall were well attended by interested employees in the opinion of union officials and key in-house committee members. By late March Mongello believed over 600 employees had signed authorization cards. He used a tactic of submitting only a large portion of these to accompany the petition filed on March 26, and retained a random balance in reserve.

During the April to late June period the Union sought to preserve the support of card signers, and acquire new ones where possible. This was a near full-time duty of Fernandez as he rovingly visited employee homes, often accompanied by employee activist and Spanish speaker Martin Viera. Fernandez also bore chief responsibility for receiving, recording and securing the Union's growing number of authorization cards as he fulfilled other needed duties at the hall.

Shortly before the scheduled election of July 6, the Union made mass distribution of two documents intended to influence employees in their imminent voting on the question of representation. The first of these parodied an indefinitely running entertainment feature at the property titled ''American Superstars.'' Here the Union combined the logo of this show with other verbiage on a cover sheet to 17 attached pages. The cover sheet announced as an ''introduc[tion]'' to readers that the ''real'' superstars at this casino hotel were the employees pictured 6 to a page on the following 16 pages. Each of the approximately 100 pictured employees was identified by name, department, and shift, along with a brief statement

of support for the Union. The eighteenth and last page of the entire document depicted a ''Yes'' crossmark as though in a voting box. The first and last pages of this campaign document were printed in both English and Spanish, while an appreciable number of the individual statements accompanying employees' pictures were in Spanish as contrasted to a majority of these messages which were in English.

The other campaign item released shortly before July 6 was an oversize sheet which harkened to the American Declaration of Independence. It then set forth employment goals, however these were composed in the cadence of the preamble to the United States Constitution. This relatively small portion of the sheet, printed in both English and Spanish, also urged a ''Yes'' vote for the Union. The apparent signatures of a few hundred persons were spread across this entire document, and onto the reverse side, as though showing support for its purpose.

During this time of hearings on the petition, consideration and disposition of representation issues by the Acting Regional Director, and preelection arrangments, the principal in-house committee members urged patience and continued loyalty by card signers along with answering numerous questions which resulted from the labor-management contest then underway. In a brief timespan just before an election was to take place in the hotel-only bargaining unit, the Union carried out final persuasions of employees in bolstering its entire approach, along with crucial attention to the Hispanic employees by the appearance and efforts of Armenta.

d. *Company's specific activities*

(1) Campaign highlights

The precautionary training of supervisors that Respondent commissioned in February was done by Labor Relations Attorney Harriett Lipkin. In the general Hilton business channels Kosinski informed Gaming Division Vice President of Human Resources Kathy Rybar about the Union's early letters announcing their organizing drive and growing in-house organizers list. Corporate Senior Vice President, Labor Relations & Personnel Administration Jim Anderson was comparably advised. Both these notifications had occurred by February.

Sherlock's ''5 day orientation'' of early March included moderately serious attention to the matter of the Union's active presence, and seemingly larger questions of employee wage and benefit levels, morale and turnover, and middle to low level supervisory competence. Sherlock solicited an opinion of the former Director of Human Resources and then Vice President and Hotel Manager Carol Mittwede. Her view of the Union campaign's extent as best then known to Respondent was comforting. However when Sherlock posed the same question to Kosinski in their first extensive meeting together, a contrary opinion was given to the effect that the Steelworkers campaign had a serious look to it. When the representation petition was soon filed this ''stunned'' Sherlock, and he switched his continued reliance about labor relations probabilities to more on Kosinski and less on Mittwede.

Roles were assumed by key management individuals in immediate response to the Union's petition. Anderson primarily developed the overall extent of Respondent's countering campaign. Sherlock was generally responsible for its implementation at the property, with Kosinski deciding on day-to-day actions, drafting or issuance of Respondent's own written material, and participation with others in various programs to win employee sentiment away from the Union.

The choice of a labor relations consulting firm was among the early specific steps taken. This was settled on within 2-weeks of the Union's petition. Attorney Joseph Herman, later on behalf of his law firm to become counsel to Respondent in this proceeding, had been retained as labor law advisor. A select group primarily comprised of Herman, Anderson, Sherlock, and Kosinski heard presentations from three potential labor relations consulting firms, and with little delay chose Flores, Lopez & Associates of Orange, California, to carry out a detailed agenda of activity. Spanish language fluency of the principals in this firm, and of the independent labor consultant they engaged to regularly assist it, was an influencing factor in the firm's selection. A confirming letter dated April 9 to Anderson from consulting firm partner and principal contact person, Hector Flores, set forth terms and conditions of the arrangement. This letter included the following listing of activities expected from the consulting firm.

> a. Calendar of events.
>
> b. Series of meeting[s] with supervisors and employees on what is a union; job security; collective bargaining; constitution and bylaws; LM-2 reports; strikes; strike replacements[;] election details and 24 hour speech.
>
> c. Counter organizing material hand out[s], posters etc.
>
> d. Individual meetings with supervisors and/or employees.
>
> e. Weekly straw poll by supervisors.
>
> f. Weekly update and/or status of campaign.

The long-term composition of the firm for actual personal endeavors was soon settled on as Flores, his then partner Patrick Lopez, and engaged consultant, Alex Casillas. In practical terms the consulting firm's prime duty was to lead a series of employee meetings in which the subject of prospective unionization was divided into six groupings, and to progressively make a presentation of company views about each topic. The envisioned format of these employee meetings was to have them mandatory for attendance, coordinated as to scheduling by the human resources department, sufficient in number that small groups of ideally about 20 persons per one-half hour session could be addressed, and with a short introduction given by the participating consultant for each session. A given meeting was otherwise to be built around a 20-minute-long video on each topic, followed by the taking of any questions from attending employees and the distribution of literature.

Besides employee meetings, the consulting group was to undertake ''preview'' meetings with supervisors in advance of each topic being presented at the mandatory employee meetings, plus subjects of benefits and voting process. These were to occur from a few days to a week before the employee presentation, and have the purpose of acquainting supervisors with the topic in order that they better answer questions later posed to them from those they supervised. Each member of the consulting firm spent long hours and at least 6-day weeks to accomplish the basic meeting schedule, and to participate in special meetings as with executive com-

mittee updatings, other general supervisory meetings and special projects when requested. This extensive presence of each consultant at and throughout the facility resulted in miscellaneous instances of one or more of them providing Spanish interpretive services for management, and having chance conversations with various officials of Respondent but particularly with Kosinski.

In the weeks from April until early July several items of company-promulgated campaign literature were distributed, along with the notifications about health insurance changes, the wage increase, and the complaint resolution procedure. Respondent, for itself and by the consultants, also insured that written, video, and verbal communication to employees about unionization was done in Spanish where appropriate. Sherlock's ''24(25)-hour'' meetings with employees on July 4 essentially capped Respondent's entire preelection strategy, although some postelection memoranda were subsequently issued in connection with the Union.

An initial opportunity for Respondent to express its position on unionization was provided by the new employee orientations as typically conducted by Hosler. In course of stating main orientation material for new employees about their job and this Hilton property, Hosler's orientation script contained the following passages:

> At this point I would like to mention that we have a few employees who have shown an interest in unions. The position of the Flamingo Hilton-Laughlin is that unions are not in the best interest of the company or our employees. . . . When a union represents employees, those employees must raise their problems through the union. And so, union represented employees would have to take their problems to the union and a union representative would then decide whether to take your problem to management.
>
> Another reason unions are not in the best interest for employees is that unions have many rules that members must abide by. Currently we have a few employees passing out cards and asking you to sign them. It would be wise to turn them down. When you sign a card you are entering into a legal binding contract with the union. You could be subject to 100 pages of rules. These rules provide that members can be subject to stiff fines for behavior the unions find inappropriate.
>
> If you have any questions on the union please ask your supervisor or feel free to come see Joan Hosler or John Kosinski.

Respondent's first known issuance which clearly represented an employer campaigning tactic was a memorandum to all employees from Sherlock dated April 29 on the subject ''UNITED STEELWORKERS.'' Its opening paragraph read:

> Many of you have complained that paid organizers from the United Steelworkers have been coming to your homes and threatening you if you don't support the Union. Don't give in to the Union's threats or tricktalk. If the Union really had the employees' support, it wouldn't need to bother you at home and threaten you.

After two further paragraphs expressing concern for employee privacy rights and impugning the Union's brashness, the memorandum closed with a passage, ''I know we have problems at the Hotel and I will do everything I can to work with you to make things better.''

A second memorandum from Sherlock to all employees quickly followed on May 6. This referred to continuing complaints from employees about home visits. It informed employees they ''don't have to talk to union salesmen or let them into your house,'' and that recourse if they wouldn't leave was to ''call the Police.''

While the consultants were obliged to disseminate a considerable amount of propaganda-like campaign material during the mandatory meetings of employees, Respondent did occasionally prod the situation with other creations of its own. On May 12, in a probably inadvertent duplication of memoranda to all employees, a one-page statement was issued by both Sherlock and Kosinski on the subject ''STEELWORKERS.'' By slightly different format, but identical words, the two memoranda each read (plus emphasis that ''THESE ARE THE FACTS''):

> The Steelworkers Union is bragging about its ''security'' and ''strength.'' Don't believe a word of it. Talk is cheap. Here are some facts:
>
> 1. *The Steelworkers Union Lost Over 500,000 Members From 1980 to 1990*. If losing jobs is what the Union means by ''security'' and ''strength'' who wants it?
>
> 2. *Your Jobs At The Flamingo Hilton-Laughlin Are Much More Secure Without The Steelworkers*. Look at what happened at The Frontier in Las Vegas. A group of unions took the employees out on strike and the Hotel replaced all of the striking employees. Now the union supporters are so disappointed and mad that they've gotten violent. Don't let that happen here.

Soon after the Acting Regional Director's Decision and Direction of Election on June 9, Kosinski issued a memorandum to all employees dated June 15 on the headed subject ''NLRB ELECTION.'' It stated the place of the election as scheduled for July 6 and the three voting periods, adding that the human resources department would check voting eligibility for any person unsure of their status. This memorandum also had the following as part of final phraseology to its short, one-page format:

> *We strongly urge you to vote in the election and to vote ''NO.''* Remember:
>
> 2. You are free to vote ''NO'' even if you signed a Union card. The Union will not know how you voted, and it is against the law for the Union to try to do anything to you if you vote ''NO.''
>
> 3. You do not need a Union, which won't do anything for you and which will cost you a lot of money.

On June 22 Kosinski issued another memorandum to all employees on the subject ''STEELWORKERS.'' This communication first referred to Kosinski's recent written advice to employees on June 15 about election details, then went on to discuss the company's obligation to produce ''a list of the names and addresses of all eligible voters,'' a copy of which the NLRB would in turn give to the Union. The memorandum continued with conjecture about how the Union might use this *Excelsior* list, as by home visits or other com-

munication. Kosinski added partisan comment against this being done, then discussed a list of 18 ''questions you might want to ask the Union before you vote.'' These questions, as attached to his memorandum, are in the record. I choose to quote only 4 of them and term a remaining 14 as carefully cast questions for which an unfavorable, or at least uncomfortable, answer would likely be required to be given.

> Q. 1. Can you guarantee that you will get us everything you say you will? Can you guarantee that you will get us *any* of the things you say you will?
>
> Q. 2. Can you guarantee that we won't lose the benefits we now enjoy if the United Steelworkers wins the election?
>
> Q. 4. Will we be able to go to work for other hotel-casinos in Laughlin if the United Steelworkers wins the election?
>
> Q. 18. What can the United Steelworkers do for us that Hilton hasn't already done?

Respondent's last preelection ''To All Employees'' campaign memorandum, except a ''VOTE NO'' of July 3 to be treated later, was that from Kosinski dated June 26 on the subject ''OPEN DOOR POLICY.'' It described an instance of the day before when a union organizer and group of aligned employees came in unannounced to see Sherlock at his office. The memorandum advised employees that while Sherlock would not want to take time with ''outsiders,'' his ''door remains open to meet with you.'' A person wishing to do so was asked only to try letting Sherlock ''know ahead of time so he can be available.''

Finally, by memorandum to all employees dated June 30, Kosinski announced that payroll checks would be available at 5 a.m. on the election date of July 6 instead of at noon as usual. His memorandum explained that this onetime change would allow voting and early pay receipt by those employees not scheduled to work that day.

The consulting firm's first series of mandatory meetings for employees began in or about mid-April. This was on the initial ''what is a union[?]'' subject. Each member of the consulting group developed their own self-introduction for any first meeting with employees. Flores stated his name, his 7-year background as a Teamsters' organizer and business agent, the fact that he had been hired by Hilton, and that he wanted to give employees information on the Union with answers to any of their questions. Flores included in his self-introduction to employees that his primary role was to instruct and facilitate information about the Union so employees ''can make a well-informed decision.''

Lopez' standard self-introduction was to identify himself as a consultant representing the Company to tell employees a ''side of the story'' they would not hear from the Union. He explained that employees had the right to organize and support the Union, or to not do so if they preferred. His message was that local management might ''unknowingly break federal law'' if they handled the communication, and it was instead his own expert knowledge that brought him to the property for the series of meetings to follow.

In Casillas' case his manner of testimony as to a ''standardized introduction'' lends itself to being quoted. He recalled that it opened as follows:

> Hello, my name is Alex Casillas. I am a labor relations consultant for the Flamingo. The reason for the meeting is to give you information about the campaign of the Steelworkers' union. My job is to give you information. What you do with that information is obviously totally up to you. My job is to answer questions that you may have an[d] to that extent, I'd like to say that if you have any questions whatsoever please ask them.
>
> Don't—you're not going to hurt my feelings by asking difficult questions. My job is to give you the answers to them, if you want. I will ask you for one thing, however, and that is that if you ask a question you give me the courtesy of responding to it. And the reason I say this is because there are times when people ask questions and they're not really interested in the answer. They're more interested in disrupting or attacking or engaging in conflict.

An extensive amount of campaign literature was distributed by the directing consultant at the end of a particular mandatory meeting. The exact thoroughness of such distribution cannot be known, inasmuch as Casillas, for one, mentioned having occasionally forgotten to make the distribution at the end of his session. It must be inferred, however, that for the most part intended dissemination of the literature associating to a mandatory meeting subject was normally achieved.

Two of the items so distributed were on the subject of negotiations. In one of these the ''U.S. Appeals Court'' was attributed in two named, but uncited, cases as expressing the following principles:

> The law does not protect employees from losing wages or benefits in negotiations.
>
> The law does not prevent a company from unilaterally implementing its final offer of a wage reduction after reaching an impasse in negotiations with a union.
>
> The law does not require a company to make any concessions to a union's bargaining demands.
>
> The law does not prevent a company from requiring a union to make concessions if it has more economic power than the union.

This one-page notification criticized the Union for seemingly not knowing these principles, and urged a ''No'' vote against it. A second one-page notification headed ''Facts About Negotiations'' opened with the reminder that the Union could only guarantee a right to bargain with Respondent by winning the election. Following this the notification document listed five points that might conflict with what the Union was promising, the fifth of which read ''Normally during negotiations employees *do not* get any improvements.'' This document closed with several lines describing how a company could reach the point in negotiations of a ''final offer,'' the only response to which was claimedly acceptance by the employees or commencement of a strike. A ''No'' vote was therefore advocated in order to ''protect yourself.''

Other specific handouts at mandatory meetings were a one-page ''Facts About Strikes,'' one headed ''Election Information'' reminding that economic strikers can be permanently replaced, one with the same heading reminding that unemployment benefits cannot be collected under ''our state laws,'' and a fourth similarly headed stating in prominent

type that ''NO UNION MEANS: No Dues—No Assessments—No Initiation Fees—[and]—No Strikes.'' Another one-page ''Strikers' Checklist'' contained about a dozen typical household expense items (groceries, car insurance, water bill, etc.), and suggested the recipient of the document fill in their own weekly or monthly totals to see ''just how much it costs to live each week (or month) [i]f you are out on strike . . . in Nevada.''

The last one-page handout in evidence was an extensive columnar chart to answer a hypothetical question, ''How long would it take you to make up pay lost if there was a strike?'' With two take home pay suppositions, and factoring in either a 5-, 10-, or 15-cent-per-hour pay increase from a strike of 1 to 10 weeks' duration, this chart expressed 33 weeks as a minimum make up time assuming only a 1-week strike that yielded a 15-cent-per-hour increase to a nearly 29-year maximum makeup time for a 10-week strike yielding only a 5-cent-per-hour pay increase.

Finally a three-page document on the ''hidden'' paycheck of Flamingo Hilton-Laughlin employees listed a claimed $4.54 hourly average cost to Respondent per employee for nearly 10 distinct economic benefits, and a listing of nearly 20 noneconomic benefits, conveniences, amenities, or discounts that were stated to be ''a significant cost to [Respondent]'' and which ''have been provided without payment of union dues and most are subject to negotiations if a union is voted in.'' These foregoing instances of campaign literature that was distributed at mandatory meetings also involved it being available in English or Spanish depending on preferred fluency of employees in attendance.

Aside from the consultants participating, randomly or as scheduled, in supplemental meetings with management, with employees to extoll the property's fringe benefits of employment, or in demonstrative ''role playing'' sessions to acquaint employees with the actual election process, the mandatory meetings of employees that they conducted occurred on a regular, structured basis over the approximate 10-week period of late April to very late June. Descriptions of this entire process vary somewhat between the consultants themselves, as with Casillas who believed his first meeting with employees did not involve running a video and Flores who recalled a second meeting about strikes. Basically, however, the mandatory meetings unfolded in systematic manner.

The videos that accompanied these meetings had been copyrighted in 1990 by an organization named Labor Relations Institute, Inc. The content of each video was essentially narrative by a mature male person, with occasional commentary interspersed by ''speaker[s]'' conversing over some common experience arising out of unionism. The fundamental message of each video was highly negative toward unions, delivered in stern tones of alarm about probable consequences of unionizing, and with frequent reference to specific instances throughout the country. There was much use of print, pictorial or color graphics, that appeared on the video screen roughly 50 percent of the time as voice audio continued in reinforcement of particular points.

(2) Video content in mandatory meetings

The series of videos had been acquired by Hilton, and in early 1993 provided to Kosinski by Rybar without any specific instructions for use. Campaign coordination with the Flores, Lopez group led to incorporating the videos, which the consulting firm was actually familiar with from its past experience. On the first subject of Introduction to unions in general, the narrator's immediate remark was:

> Since the union is now trying to become your legal representative, there's a lot of information about them you need to know.

He then first cast unions as ''becoming a thing of the past,'' that had ''failed to adjust to changing conditions [from 1930 and 1940, and so] they're becoming extinct.'' The narrator termed unionized industries as those in ''terrible trouble,'' while over in nonunion companies ''the future is bright.'' He recommended that in exercising an employee's legal right to vote for or against a union, rejecting a union is ''one of the best ways to insure a secure future.''

The narrator claimed unions (1) suffered from dwindling membership; (2) misspent dues revenue; (3) had connections to organized crime; (4) tricked, pressured, and bullied employees into supporting the union; (5) could not assure an employee's job betterment because winning an election only gave a union the right to negotiate with a company, but without any guarantee of bargaining results; (6) introduced onerous membership obligations based on union constitutions and bylaws; (7) might cause a person to lose their job through failed strike action; and (8) spread misleading promises of job security through unionization, while neglecting to mention that in states where they are legal a contractual union-shop clause could require that every employee must join the union and remain a member or be fired. The narrator did not mention that Nevada is a ''right to work'' state, where such a clause would not be legal. This first video closed with the narrator stating, ''[W]e don't want a union here . . . .''

The content of this introductory portion of the full video cassette was actually a preview of the four subjects and a summary which would follow in more detailed manner. In the course of commentary on the meaning of collective bargaining and the peril of strikes, the video screen twice displayed excerpts from past Board decisions. The narrator identified the Board, and termed these excerpts to be statements of ''the Government Agency that regulates union organizing attempts'' as he read each passage aloud by uninterrupted audio assimilation with his continuing message about unions. The first excerpt reached was from *Coach & Equipment Sales Corp*., 228 NLRB 440, 441 (1977). Here the passage displayed was:

> Collective bargaining is potentially hazardous for employees, and as a result of such negotiations, employees could [might] possibly wind up with less benefits after unionization than before.

The second excerpt was taken from *Oxford Pickles*, 190 NLRB 109 (1971). This passage stated that ''an employer may permanently replace economic strikers.''

The second subject from the cassette holding this 1990 video production was about job security. Here the narrator (same person throughout the entire English language series) (1) associated unionization to slumping industries; (2) assailed a ''Bunker Hill Mine Company'' situation of disasterous consequences related to union negotiations in Idaho; (3) raised other instances from Arkansas, North Carolina, and elsewhere having comparable results; and (4) used

''speaker[s]'' to highlight these negative consequences from a working person's viewpoint.

The narrator discussed various ways in whch the presence of a union worked against the job security of rank-and-file employees. Union-security or ''Union Shop'' provisions were among the factors discussed, with a passing statement that ''in some states this provision is illegal.'' The status of this pitfall as being legal or illegal in Nevada was not given. At this point a graphic also contained in the first video was again displayed. It was a barely legible letter on stationery of the International Association of Machinists, requesting under provisions of a contract that a company discharge an employee for failure to pay dues on time. The narrator then referred to lower than average wage increases in unionized establishments of the private sector as compared to nonunion companies. He closed this second video subject with the following statement:

> More job security and a better future, period, and all without a Union. Vote for yourself, vote for your family and your future. Vote no.

The third video treated collective bargaining. The narrator began by stating that under the National Labor Relations Act a legally elected representative of employees wins only the *right to negotiate* with a company. He then emphasized that wages and benefits currently in effect at the time of unionization were not necesarily a ''starting point,'' that promises of improvement by union organizers could not be guaranteed, and that contract negotiations could lead to more, the same, or lessened wage rates or other conditions of employment. The narrator stated that ''no company is ever required to agree to union demands it considers unfair or unreasonable.'' Certain statistics as to ''concessionary'' agreements were shown, and the following excerpt from *Midwestern Instruments*, 133 NLRB 1132, 1138 (1961), appeared for viewers to see:

> There is, of course, no obligation on the part of an employer to contract to continue all existing benefits, nor is it an unfair labor practice to offer reduced benefits.

In a followup to this theme, the above-quoted excerpt from *Coach & Equipment Sales* was again displayed as the narrator read its words aloud for viewers. Popular promises of union organizers were itemized, but claimed not to be susceptible of fulfillment because collective bargaining was termed a process in which employees could end up with more, less, or the same benefits as before. An unnamed Texas company was discussed, where employees had voted in a union and it led to disappointingly lowered wages and loss of numerous benefits. In another instance of a Florida company, 14 employee ''speaker[s]'' appeared in sequence to state how after voting in a union they lost money and gained no benefits after negotiations ended.

During presentation of this third subject the narrator also spoke of union-security and dues-checkoff clauses. He said these only serve as ''very important'' protection to a union's ''financial position,'' but can often be traded in a course of negotiations by ''giv[ing] away benefits the employees had before a Union came in.'' These factors were claimed to be a reason that employees were increasingly voting to decertify unions, a process having the result of decertification over 70 percent of the time according to NLRB statistics. Before concluding this video, the narrator also touched on strikes to obtain contract demands. Here he noted that employees of Respondent would ''soon be seeing some important information'' about strikes, which were ''not usually a good idea.'' This third video closed with the narrator saying:

> Unions can't guarantee you anything. They know that collective bargaining is a give and take process and that recently Unions have given more than they've taken. Think about it, what can a Union really do for you? Vote No.

In the fourth video the narrator focused on constitutions and bylaws of unions, which he termed ''a set of rules and regulations'' that must be followed when employees become members. The narrator read from several constitutions of labor organizations, disparaging their limitations on job-related activity of members and the creation of misusable union authority. In one notable portion of the fourth video a courtroom-like scene was shown, with a person seated in a witness box while seemingly being examined by an attorney. This graphic associated to video passages about the power of unions to punish for infraction of their rules. For this supposedly ''the member can be put on trial . . . just like a common criminal.'' The background of this portion of the fourth video was an Archer-Daniels-Midland Co. strike in Illinois, which was settled after 100 days. An employee and union member had crossed the picket line and returned to work. His union tried him and levied a fine of $64 for each day worked. The video narrator concluded the episode by saying that a court had forced the person to pay the resultant $6400 amount. The terms ''found guilty'' and ''kangaroo court'' were voiced to embellish this portion. His closing statement for viewers was that:

> If you believe the things we've talked about in this presentation are things you would not be comfortable with, things like dues, fines, assessments, trials, restrictions on your freedom of speech, restrictions on solving your own problems, the way the Union would use your money and the type of people who control some unions, then vote no.

The fifth video was devoted to the subject of strikes. In the first moments of his remarks the narrator stated that strikes by unions are known for ''the violence that often accompanies them.'' Strikes were also presented as occurring more frequently than commonly believed, and the narrator preceded this ''very real and increasingly likely possibility'' by stating:

> Also, consider the number of times you've recently heard or read about strikes and related violence. The Greyhound strikers, for example, who fired shots into busses loaded with innocent passengers or the Pittston Mine Workers whose Union was fined hundreds of thousands of dollars for sponsoring strike related violence against the Company.

Strike action was claimed to often require a majority vote of members, but nevertheless be binding on all employees connected to a particular negotiation. Viewers of this video

were reminded that pay and fringe benefits were stopped during a strike, that strike benefits from their union would likely be skimpy, that unemployment compensation is ordinarily not paid to strikers, and that companies can hire permanent replacements in a process that means ''a chance there might not be a job for you to return to when the strike is settled.''

The strike video narration concluded with extensive treatment of a 21-month strike situation at an Oklahoma company named Liberty Glass. The narrator preceded such treatment by disclaiming that if the Union were to win an election ''there will automatically be a strike,'' or that strikers would lose their jobs. The narrator's point, however, was highlighted by the display again from *Oxford Pickles* reading ''an employer may permanently replace economic strikers.'' As usual the narrator read this quoted passage in background audio as it appeared in display on the screen. Numerous acts of civil disobedience and violence were described as having occurred during the course of the Liberty Glass strike, including mass picketing, fire bombings, assault, gunfire, arson, and a near riot causing personal injury. The narrator's final remarks of the fifth video were:

> Whenever a strike occurs, there's always a possibility it can turn ugly, even disasterous. And with a Union, there is always that possibility of a strike.
>
> But, there's one sure way to make certain you never have to go through the same kind of things the employees of Liberty Glass suffered. Never put yourself in the position where a Union can call you out on strike.
>
> And how do you do that? Simple, vote no. Don't let an outside third party, with goals of its own control your working lives. Vote to stay union free. Just vote no.

The sixth and final video shown during the mandatory meetings was on the mechanics of an election, followed by a review of all earlier subjects. It was actually headed ''24-Hour Presentation,'' a labeling which I believe showed simply an inadvertence in tape editing. It began with the plea for a ''union-free'' vote from employees in their secret-ballot choice, then illustrated the election process and had a largely repetitive review of points made during each full video subject. The earlier-quoted excerpt from *Midwestern Instruments* was repeated on the screen, along with the ''potentially hazardous'' language regarding collective bargaining from *Coach & Equipment Sales*.

In footage moving toward its conclusion, this video covered human interest fears of union ''strong arm tactics'' such as explosion, disabling injury, and gunshot consequences. A Reader's Digest article was described as to Mafia control of unions, plundering of pension funds, and mismanagement of benefit programs by criminal elements. A quotation was attributed to George Meany, past president of the AFL–CIO, about how criminal control of a labor organization had been uncovered as an instance of ''[trade] union corruption.'' The video content then turned to earnest comment that teamwork and mutual respect, not a union, was most needed. Viewers were urged to believe that ''The enemy here isn't the Company''; that the ''real enemy, as far as your working life is concerned . . . is business *competition*.'' The narrator's final summation stated:

> We're going to beat this Union and beat them bad, because they have nothing to offer that you can't get without paying Union dues, fines and assessments.
>
> They have nothing to offer that you can't get by dealing directly with the Management of this Company. On election day, vote for yourself. Vote for your future. Vote no.

Additionally, the sixth video was followed by several minutes of television newscast footage broadcast on May 13 by a Las Vegas channel. It dealt with the recent beating of two California tourists and injury to a police officer, both matters arising on a strike line outside the Frontier casino hotel.

The sixth video intimated it had been made for employment in the setting of manufacture. This appeared in argument that a ''customer'' of the company for whom viewing employees worked could depend ''on our products to run his business.'' Earlier videos of the mandatory meeting series had carried the same intimation, by visuals plus references to ''plant closings,'' ''products manufactured,'' and management-rights clauses allowing control of production processes. While this was the intimation, and graphics often reinforced it with statistics or factory scenes, the subject matter was universal enough to have application in service industries and is not minimized because the activity here is gaming. Furthermore, the opening video had personalized the message in terms of this Hilton property when the narrator stated in concerned tones that:

> Recently a Union has been trying to get you to vote for them in a National Labor Relations Board election. You're probably wondering what this election is all about and what will change if the Union wins.

The Spanish language version of the six video subjects for mandatory meetings was largely comparable to the English language version. A younger male narrator covered the six subjects, as contained in a separate cassette showing Labor Relations Institute copyright in 1988. Overall there was less graphic content to the Spanish language version, in apparent reflection of footage made or acquired by the producing organization between 1988 and 1990. Some of the graphics were identical in the two versions, and insofar as ''speaker[s]'' are concerned their English language delivery was reduced in volume to allow the narrator's predominant voice and simultaneous Spanish translation to be conveniently heard. The most extensive graphic was the Liberty Glass experience, which appeared fully the same in extent as the English language version. The sixth and last subject of the Spanish language video was, as expected it would be, headed (in English) ''Conclusion.''

The record does not contain formal translation of the Spanish language video cassette. I have viewed it in order to best assess comparability with the English language series. The narrator's vocal delivery, the audio correlation to graphics, and the readily recognizable cognate words appearing as print content, persuade me that for purposes of issues in this case the Spanish language version of the six video subjects has substantially the same materiality and effect as that which can be found in the English language series.

(3) Video content in 24(25)-hour meeting

The 24-hour (sometimes termed 25-hour) meetings at which Sherlock spoke were principally given over to the time involved in showing a video. This video had been filmed and edited by a commercial production company undertaken to do so by Respondent. The result was a color feature with some musical background and a professionally sounding narrator.

It began with pleasant scenes of the property and various employees engaged in their work. The narrator's voice praisingly accompanied several minutes of such footage, and his message then veered to a more somber prospect of third party disruption. Such a third party was pictured as to its logo and pronounced to be the ''United Steelworkers Union.''

The heart of the video followed, setting forth extensive description of the Union as a crumbling, financially ailing, wasteful, and desperate organization. A flow of graphics and statistics reinforced the narrator's scolding statements. The Union's tangled finances were discussed, with a showing from required government reports that the International union had found it necessary to actually loan Las Vegas Local 711A the amount of $100,000.

The Union was accused of making misleading claims to the achievement of negotiation rights, without also revealing that their promises to employees or bargaining demands need not be accepted by an employer. Operative words from Section 8(d) of the Act were screened, and simultaneously read aloud, that the mutual obligation to bargain ''does not compel either party to agree to a proposal or require the making of a concession.'' Additionally, viewers were told that bargaining is like a gamble, and although they could end up with more they could also ''bust and end up with less.''

Particular emphasis was then applied after advising viewers the Bureau of National Affairs in Washington, D.C. had reported that 9 out of 10 contracts negotiated by the Steelworkers between 1987 and 1989 were concessionary in nature. A detailed illustration of this point was given in regard to Union Local 7090's contract with the Coates Plaza. This establishment is an 80-room motor inn located at Virginia, Minnesota. As graphics predominantly continued, the narrator criticized the Coates Plaza contract for insufficiencies in wage rates and fringe benefits.

The video continued from here with an assertion that strikes are more prevalent than the Union would have it believed. Various financial and other drawbacks of being involved in strike action were posed, and a series of speakers were pictured to be disillusioned or victimized employees or nonstrikers from a Steelworkers' strike at Phelps Dodge in Arizona. Five such speakers described their financial travails, or the violence visited on them.

A long, handwritten letter was then screened, which had been written by Ina Woltman, an employee of Respondent's Flamingo Diner. It set forth, in sorrowful personal detail, how 10 years before the writer had her seemingly secure future destroyed following a Steelworkers' strike where she worked in Wyoming. In employment terms her message was that of being 1 of 600 individuals who lost jobs when a mine permanently closed ''because the Union would not cooperate.''

Following this the narrator brought up Sherlock's name, terming him a person ''fair and consistent'' and with whom ''we can solve our own problems here in Laughlin.'' At this point the video was paused while Sherlock spoke formally to the asembled employees with a carefully written script of remarks. Sherlock withdrew from the meeting after finishing his statement, and the video resumed.

The several minutes toward its conclusion were again changing scenes of employees gesturing gaily at a filming lens as they worked. A background of narrative praise for the Flamingo Hilton-Laughlin as a place to work and known for quality service to guests was also being spoken, accompanied by a jingle-like musical composition.

Final material pictured eight speakers; employees of the Flamingo Hilton-*Las Vegas*, who recalled Sherlock very favorably as a highly placed executive of that property. The video closed with a full screen qualified disclaimer concerning statements of persons appearing in it with respect to their ''support of or opposition to the United Steelworkers of America.''

During the course of this video quotations were screened from Board cases, the ''potentially hazardous'' in collective bargaining and right of employers to ''permanently replace economic strikers'' language as taken from *Coach & Equipment Sales* and *Oxford Pickles*, respectively. (The quotation from *Coach & Equipment Sales* was inadvertently attributed to *Midwestern Instruments*.)

The 24-hour video had its Spanish language version, the one shown at two of the eight meetings convened by Sherlock on July 4 to cover all employees eligible to vote. This was not a perfect product, for Casillas recalled one instance of discrepancy in numbers between what a graphic showed and what the narrator spoke. However as with the main video series, I find the narration, scenes, graphics, and cognate print result in this Spanish language version appearing substantially the same in materiality and effect as the English language version.

D. *Complaint Allegations*

1. Paragraphs 7(a) and (b)

a. *Issue*

The issue here is whether, during the period from April 28 to July 6, Respondent unlawfully restricted the work area movement of Wilma Miller in and around its facility in violation of Section 8(a)(1) and (3) of the Act.

b. *Evidence*

Miller has worked at Respondent since it opened, with a classification of head pantry in the chefs department. During April she was working the pantry station in the Alta Villa restaurant. This had been her specific job since late 1992. Her duties were to make all cold food for the buffet, after listing and ordering what would be needed on each daily shift.

Until early May she unrestrictedly traveled throughout general food preparation areas such as the main kitchen, the ''garde manger'' (salad preparation), and the bakery. The purpose of her movement was to obtain foods and food preparation supplies. She estimated the amount of such travel during her normal 2:30 to 10:30 p.m. shift as fluctuating from 1/2 to 2 hours per day. Conversely other employees of the food and beverage department entered her area to obtain

special delicacies that Miller would be expected to stock. In the course of all such cross-travel, Miller had habitually engaged in ordinary job, social and union campaign conversation with coworkers.

A change in this routine occurred in early May. Miller was in the main kitchen for ice cream, and was abruptly spoken to by Sal (Saul?) Ortiz, a supervisory specialty chef, who told her to return to her area. Ortiz added that from then on others would bring what she needed to her station.

About a week later she was nonetheless going toward the bakery, and on being seen by Luis Herrera, a higher supervisory sous chef, was told by him not to be there and to get back where she belonged. Still later in May she was in the bakery for a chocolate cake, and when seen by Herrera told to stop talking and again return to where she belonged.

After this third restriction Miller did stay only in her immediate work area, without the miscellaneous traveling away from it as before. This meant that others had to supply her with every kind of specialty food item, a process that delayed her own fulfillment of work and a hardship causing her to feel distressed.

The situation was aggravated still further by an incident occurring between the dates of April 28 and July 6. During a business lull Waitress Marie Liebe was talking with Miller at the Alta Villa pantry station about a mandatory meeting Liebe had attended. Ortiz approached the two of them and informed Miller that a coworker could not talk with her there, but could only pick up the needed food items and leave. Ortiz then marked off a boundary area, which was to be the closest others could stand to her when they were necessarily at this pantry station.

The work movement restriction ended on July 6 from Miller's experiences on that date. She was preparing food at her pantry station, and told Ortiz she would have to go outside it because her meat slicer was not working. He approved this and she proceeded into the garde manger where a working slicer was available. While there Assistant Executive Chef James Bocanegra came by, saw her, but said nothing. From that point onward she resumed traveling freely throughout the facilities as she had done before early May. Miller later requested transfer to the main kitchen, and relocation of her work station to a garde manger assignment was approved effective in October.

Howard Silver was promoted to be Respondent's executive chef in March, after holding other positions in the Hilton organization. Shortly after this he began hearing complaints from employees of the department and supervisory sous chefs that Miller was spending an excessive amount of time away from her work station in the Alta Villa pantry.

Silver took this up with Kosinski and Food and Beverage Director Wayne Muth. Then in May Silver arranged a meeting with Miller, at which Muth was also present. The officials told Miller to stay at her work station unless specifically authorized to go elsewhere or when she was on break. Silver believed this minimized, not corrected, the problem of her job behavior.

At Kosinski's request Silver had prepared a document headed ''Alta Villa pantry guidelines'' dated May 3, 1994. Among the several rules and duties listed in this document was one stating, ''Stay in pantry area between 2:30 p.m. and 10:30 p.m. unless otherwise instructed by Sous Chef.'' A 3-1/2-page job description stipulated to apply to the head pantry position for the Alta Villa states that an incumbent must have an ability for ''walking significant distances, maximum of three miles per eight-hour shift.''

Bocanegra had become Respondent's assistant executive chef in early May, after spending a number of years previously in the Hilton organization. His basic duty was floor work intended to assure complete food production for Respondent's various restaurants. He believed a total of 15 minutes per shift would suffice for a head pantry person of the Alta Villa to travel away and back between their station and the main kitchen while obtaining food supplies and equipment.

During the first 2 months as assistant executive chef, Bocanegra noticed Miller spending an excessive amount of time away from her station. This same observation was reported to him by Supervisor Ortiz. The particular locations in which he observed Miller were the employee dining room (EDR), main kitchen, garde manger, and bakery. Additionally, employees of the department reported to him that Miller was annoying them with attempted conversation that did not relate to work.

Bocanegra relayed this information to Silver, as well as telling Miller that she should stay at her station while working. His statement had been in response to, and attempted resolution of, her voicing a concern over unfair treatment from Ortiz in prohibiting her from going to other areas of the hotel.

Bocanegra recalled three incidents during the period of June to early July when Miller asked him for permission to get fruit, lettuce, or tomatoes. On each occasion he kept her in place, and either obtained the items for her himself or called to the main kitchen for the item to be brought to her pantry.

Bocanegra knew Miller was a union supporter from an insignia pin she regularly wore, and by the indicated subjects that other employees told him she talked about. During the period of early May to July 6, Bocanegra also instructed other employees to return to their stations during work hours. He testified that the Alta Villa guidelines document had not, at least to his knowledge, existed before May 3, 1994.

c. *Credibility*

I am persuaded that Miller's candid-seeming testimony was truthfully rendered. I accept her version of facts occurring during April 28 to July 6, as a basis for resolving this issue. Silver's demeanor was extremely poor, and he resignedly conceded various instances in which his testimony shifted evasively or conflicted with that previously given.

I also discredit Bocanegra insofar as he depicted practical job requirements of the head pantry position differently from Miller. In consequence the salient testimony of both management witnesses is rejected where in conflict with Miller's version. Muth, Ortiz, and Herrera did not testify.

d. *Holding*

When union adherents are barred from entering areas for which they previously had free access to secure necessary work implements, such a restriction is reasonably calculated to interfere with a free exercise of statutory rights. Where no good reason is shown for the restriction, such employer action is in retaliation against union adherents and tends to de-

feat union activity. It is for this reason an independent violation of Section 8(a)(1) of the Act.

An unlawfully designed restriction which particularly impedes securing routinely used work items also violates Section 8(a)(3) of the Act as a discouragement to union membership and activity. *Animal Humane Society*, 287 NLRB 50, 59 (1987). See *Heartland of Lansing Nursing Home*, 307 NLRB 152, 163 (1992); *Miller Group*, 310 NLRB 1235, 1238 (1993).

Miller had been named in a letter to Respondent dated March 26, in which additional in-house organizers were listed. This overall awareness about her special category of support for the Union was thus well known to Respondent, and reinforced during May when Bocanegra saw her open display of the pin and learned from others that she was advocating.

By early May the consultants were well into both preview and status meetings with supervisors. This broad coverage of management personnel at several levels would easily give individual supervisors a motivation to conform with Respondent's objective of defeating the Union's campaign. In narrowing this context to the credited evidence as to what Miller experienced, the inference is compellingly invited that unlawful action was undertaken against her.

The restriction ended abruptly on the election date, beyond which Miller's traditional moving around of perhaps 2 hours a shift would no longer have an effect on the campaign. Respondent's evidence does not persuasively establish that Miller was interfering with work underway by others, nor was any rank-and-file employee called to so testify. The restriction imposed awkward and inefficient alternatives to Miller's normal activity, which supports still further the available inference that her strained isolation was more than suspicious. Finally, evidence is starkly plain that Respondent contrived an afterthought document trying to show that established guidelines for Miller's job mobility should be considered, even though its very creation arose 6 months after she left the Alta Villa job.

I consider Respondent's reliance on *New Process Co.*, 290 NLRB 704 (1988), unavailing as to this issue. In that factually dense case, an employee's work movement restriction was done in a context of highly structured machine operator teams, and a showing of employer inconsistency in imposing specific restrictions as among different employees. The Board stated it was expressing ''no views'' as to the administrative law judge's findings and conclusions about which no party filed exceptions. The specific restriction there at issue, involving an employee named Frances Work, was apparently one to which no exceptions were filed. *New Process* is sufficiently distinguishable on its facts and for precedential value as to not profit Respondent here.

I hold that the General Counsel has achieved substantial evidence to support the allegations of complaint paragraphs 7(a) and (b).

2. Paragraphs 8(a), (b), and (c)

a. *Issue*

The issue here is whether, during a period of on or about April 28 and May 4, Respondent unlawfully (1) changed health insurance coverage of its employees by providing additional options; (2) lowered the health insurance premiums employees were required to pay; and (3) provided its employees an additional health insurance open-season period. This and all remaining specific allegations in the complaint of unlawful conduct invoke only Section 8(a)(1) of the Act.

b. *Evidence*

Since its opening in 1990 Respondent had provided employees a choice of two health insurance plans. The first of these was termed the Hilton plan, run by Silver State Medical Administrators as a preferred provider organization (PPO). The second group medical choice was Health Plan of Nevada (HPN), operating a health maintenance organization (HMO).

The scope of possible coverages under either plan was for employee only, two-person coverage, or family coverage, with increasing cost amounts for each category. Total monthly cost of the Hilton plan was a dollar figure derived from the type and extent of health care benefits the employer desired to create for its employees and persons they had also chosen to cover. An arbitrarily determined portion of this monthly premium was established by Hilton as a covered employee's share of cost.

In Respondent's early years of operating this employee share was generally a 10- to 15-percent range for the categories, although initially no charge was imposed by Hilton for employee-only coverage. An employee's premium contribution share was made by payroll deduction. Premium configurations for the HPN plan were generally similar, after annual negotiations between Hilton and that provider to establish actual amounts. Under HPN all categories of coverage required some employee contribution toward the monthly premium, this too in an approximate 10- to 15-percent range during early years. Beverly Hills-based Lynn Hein, Hilton's vice president of benefits administration, was chiefly responsible for oversight of these plans.

Near the end of Respondent's first partial year in operation, a review of these plans was done by memorandum dated November 12, 1990, from Mittwede to Hein, and copied to Respondent's then president, Gary Gregg. The reviewing memorandum prefaced that proposed increases in employee cost for their group health insurance in 1991 had been carefully considered as to several ramifications including ''our opposition to an organized workforce.'' A 4-day open enrollment period for changes in plan or coverage was then announced for mid-December 1990. The announcement listed new premium amounts and an employee's cost share, as well as reminding that changes could be made once a year only.

By memorandum dated May 13, 1991, Mittwede offered Rybar some midyear information about operation of Respondent's health insurance plans, copying the advice to both Gregg and Hein. A theme of this communication was to increase the low proportion of employees that had chosen the Hilton plan. Mittwede's memorandum discussed employee enrollment, market competition, and provider service factors, noting Respondent's ''obvious goal of remaining predominantly non-union.'' Late that year a memorandum dated November 11, 1991, from Gregg to John Giovenco, president of the gaming division, also addressed the desirability of attracting more employees to the Hilton plan, and keeping employee costs down for this fringe benefit. Gregg's memorandum concluded as follows:

> With the ongoing union organizing efforts, a major increase in required employee contributions could become an issue used by the unions to promote card signing.

This reference to ''ongoing union organizing efforts'' was in fact based on a Teamsters Local 14 effort that was underway from a point in 1991 until late 1992. In October 1992 Respondent, without admitting the commission of any unfair labor practices, informally settled a series of charges by the Teamsters, following which a unionization campaign of that labor organization simply ceased. The Teamsters year-long activity had not resulted in the filing of a representation petition.

There was contact between Respondent and a third health insurance provider in June 1992, this an HMO called FHP. In the course of such contact, FHP provided Hein with its ''5/3/0'' plan information and rates in a transmittal dated June 18, 1992. The record is insufficient to make a fully accurate cost comparison, particularly because of unknown impact of a ''SISCO'' dental and eye care plan also elected as contributory health insurance by many of Respondent's employees. In very rough terms of what is known of the HPN plan for 1992 and the FHP proposal made in midyear, FHP rates were perhaps about 10 percent less than comparable HPN coverage at the time. However FHP's proposed effective date was August 1, 1992, and quoted rates were only valid for the calendar quarter ending September 30, 1992. Mittwede and Kosinski had some inconclusive consideration of adding a second HMO in their transition discussions when he succeeded as director of human resources on July 20, 1992. Their consideration of the FHP proposal continued throughout that summer. However it was discontinued at the direction of Rybar in September 1992, with no further action taken at the time respecting employee health insurance benefits.

In late 1992, Respondent announced increased insurance costs in an employee's premium portion based on their category of coverage. For the first time in the Hilton plan a monthly cost of $4 was to apply at the January effectiveness of these rates, but in that category only for new enrollments. All other categories of both plans were increased, the new monthly employee costs of HPN coverage being scheduled as $28.33, $55.28, and $71.50, respectively, beginning in January. This represented a complete passing on to enrolled employees of HPN premium increase amounts for 1993. These increases in the employee cost as a percentage share of premium totals raised them to 19 or 20 percent. The previous year HPN had not increased its premiums, and while Respondent added small amounts to the employee share of HPN this still left the percentage range of employee cost as only 13 or 14 percent.

Kosinski had learned of employee unhappiness with the size of the 1993 HPN increases soon after they occurred in January. When Kosinski briefed Sherlock in early March just after his arrival to assume the presidency, Sherlock turned the subject of health insurance programs, their cost to employees and the notion of adding a second HMO back to Kosinski for more study. Still later he authorized Kosinski to take the matter up specifically with Hilton officials. Kosinski did so by initial contact to Anderson, and from this continued discussion with Hein as a subordinate to Anderson. It was early April by the time of these dealings.

Although no documentation of the change representing business matters betwen Hilton and FHP was entered in evidence, an announcement was made by memorandum in Sherlock's name dated April 28 to all employees (excluding several unionized stagehands) that an additional HMO was being added to their current choice of health plans. The organization was identified as FHP, which was represented as having more favorable benefits than HPN plus that their plan would offer monthly employee cost savings per category of coverage as $24.18, $28.80, and $39.20, respectively. An open enrollment period was established during May 3 through 8, and the new option would be effective May 15. The timing of this announcement had been discussed and agreed on by Respondent's executive committee, subject to Anderson's approval.

Hein promptly received a letter of protest dated April 30 from a sales director at HPN. This writer stated HPN had learned of ''a second HMO offering'' to employees at Laughlin, and claimed this would contravene contractual provisions of the current year's renewal agreement in effect between HPN and Hilton. Sherlock and Kosinski discussed this between themselves, and Kosinski was instructed to continue coordination with Hein on the matter. However 2 business days later the same sales director wrote again in confirmation of discussion with Hein that HPN would reduce its rates, effective May 15, to practically the same amounts of the FHP plan just announced.

More importantly, another memorandum of Sherlock on that same May 4 date to all employees advised them of HPN's response in ''matching'' the rates of FHP. More importantly still, Sherlock's second memorandum itemized a monthly employee contribution amount under the HPN matching response as $4.15, $26.48, and $32.30, respectively. These figures meant that with mere pennies of difference as a Hilton contributing cost, the ''savings'' to employees was of less significance than the hard facts that now under both HMOs the exact monthly cost to employees by category would be the respective $4.15, $26.48, and $32.30 amounts set forth in Sherlock's second memorandum, and to be effective May 15 for employees to switch either way if they chose. An immediate new and partially overlapping 5-day enrollment period was established for change to HPN, or for change back to it for those employees who had promptly dropped it after the first memorandum. An incidental fact was that in percentage terms of total health care monthly premiums the employee portion would, under both HMOs, drop to 3, 10, and 10 percent per respective category of coverage.

Going into May, over 1600 employees of Respondent facility-wide had health insurance coverage. These were divided between 400+ under Hilton (Silver State) and 1200+ under HPN. The response to the early May options was sufficiently enthusiastic that by June 250 employees took coverage under FHP, the large majority of these being drawn from former HPN participants.

c. *Credibility*

The issues regarding employee health insurance benefits do not require credibility resolutions in the traditional sense. However it is convenient at this point to make credibility-related comment that has frequent application because of the magnitude of this case.

In the course of his extensive testimony, Kosinski was twice drawn to square what he offered here with his previous responses on a subject at the objections hearings of late 1993. In one instance this involved the nature of his communication to Hilton corporate about the Union's January 26 letter announcing its organizing drive, and the other instance was to state an energy level to the campaign Respondent determined to mount in opposition.

Testifying here as to the first instance Kosinski placed his earliest meaningful communication to Anderson as happening in March when the Union's petition was received. This conflicted openly with his objections hearing testimony in which he assuredly placed such advice as having been supplied to Anderson promptly in January when the Union first openly revealed itself.

As to the second instance Kosinski repeatedly deflected a plainly voiced question as to whether Respondent had determined to make a ''strong'' campaign against unionization of this major employee component. This too starkly contrasted with his testimony nine months earlier that a ''strong'' compaign was exactly what Respondent had decided on early and with full resolve.

I consider these predilections to show that candor was often lacking in Kosinski's testimony. Stated otherwise, I am satisfied that he slanted many factors critical to the case, in an effort to falsely portray Respondent in the best light. In a specific instance later when I discredit Kosinski on demeanor grounds, it shall be stated during treatment of that issue.

d. *Holding*

The fundamental predicate to resolution of this issue may be taken from *NLRB v. Exchange Parts Co*., 375 U.S. 405, 409 (1964), in which the U.S. Supreme Court held that ''conferral of employee benefits while a representation election is pending, for the purpose of inducing employees to vote against the union 'interfere[s] with' the protected right to organize'' under Section 8(a)(1) of the Act. The Court's much-quoted observation on this point is:

> The danger inherent in well-timed increases in benefits is the suggestion of a fist inside the velvet glove. Employees are not likely to miss the inference that the source of benefits now conferred is also the source from which future benefits must flow and which may dry up if it is not obliged.

In *American Sunroof Corp*., 248 NLRB 748 (1980), the Board wrote it ''has long held that the granting of benefits during an election campaign is not per se unlawful where the employer can show that its actions were governed by factors other than the pending election.'' In elaboration on the point *American Sunroof* also observed:

> And the Board has further held that an employer can meet this burden by showing that the benefits granted were part of an already established company policy and the employer did not deviate from that policy on the advent of the Union.

The granting of new health insurance benefits during the course of an organizational drive does not give rise to a presumption that it is unlawful. Rather, an inference of improper motive and interference with employee Section 7 rights must be drawn from all evidence presented, including an employer's failure to present a persuasive business reason demonstrating that timing of the grant of benefits was governed by factors other than a union campaign. *Springfield Jewish Nursing Home*, 292 NLRB 1266 (1989). See *Speco Corp*., 298 NLRB 439 (1990).

Respondent had long associated its health insurance offerings with a determined corporate policy of avoiding unionization. The cessation of organizing activities by the Teamsters in late 1992 created a lull in having any imminent prospect that a major component of its work force might be unionized. With pressure of that nature removed, Respondent boldly increased its employees' contributory health insurance premium portion to an unprecedented percentage amount at the start of 1993. This generated dismay within the work force as to the amount of these increases, and awareness of such discontent was soon fully known to Kosinski, Respondent's executive committee, and Sherlock himself. Circumstances were abruptly changed by the Union's petition.

The FHP proposal held the immediate prospect of eliminating such lingering discontent. Further, it would tie in well with the consultants' relentless message that unionization was unwise and would not yield favorable results for the employees. When HPN matched a competing proposal this allowed Respondent to sweeten its package still further.

Regardless of what FHP was impelled to offer in spring 1993, Respondent must be held to recognizing the coercive effect this would have on employees. Respondent's disdain of FHP in 1992 is the best indicator that it was satisfied to have two choices of health care plans for its employees. For this benefit of a third choice to surface when it did, and to have Respondent snap up the opportunity, is a sufficiently plain instance of expecting that employees would recognize and appreciate the employer's action.

Nothing of significance is present from the evidence to warrant the timing of presenting this benefit, and to pleasing so many hundreds of the persons within the targeted unit only several weeks before it could be expected that an election would be directed at least among the 1000-member hotel unit. In *Ideal Elevator Corp*., 295 NLRB 347, 351 (1989), the Board adopted language concerning the discretionary grant of improvements by an employer which ''were timed to lure employees away from'' a labor organization. There the wage increases and insurance benefits were instituted over a 3-month period ''on the heels'' of a representation petition, which clearly showed they were meant to discourage employee support for the union that was seeking recognition. The entire array of evidence here leads to an inference, which I adopt, that Respondent was motivated by impermissible objectives of inducing its employees away from the Union.

Respondent's countering arguments are not persuasive. The first is that Giovenco had limited Nevada properties to offering one and only one HMO plan to their employees. This is a claim without substantiation. Absent Giovenco's own testimony, or some other convincing evidence on the point, I give no weight to such an unexplained rigidity. The claim also conflicts with the fact that Respondent's human resources and benefits administration officials spent extensive time and effort in analysis of FHP's 1992 proposal.

Respondent also points to its own cost savings by immediate introduction of the FHP and revised HPN plans. However this savings only calculated out to $37,000 had there been no change until the established open season of December. This considerable-sounding amount was a mere 10 percent of what Respondent was spending for consultants' activity alone, and would have been a great deal less if deferred only until an election could be held on the pending question concerning representation.

For this reason *Adams Super Markets*, 274 NLRB 1334 (1985), is unavailing, because that case showed the employer ''had long planned the changes'' which referred to the fact that modification to a medical plan had been under consideration ''for nearly a year.'' Furthermore, the new plan was specifically accelerated by a new chief executive, and replaced a former self-insured plan under which there had been no cap on the employer's liability. This factor of ''economic justification for not delaying announcing the medical plan until after the election'' was an additional element in the Board's conclusion that this employer had acted lawfully.

I hold that the General Counsel has achieved substantial evidence to support the allegations of complaint paragraphs 8(a), (b), and (c).

3. Paragraph 8(d)

a. *Issue*

The issue here is whether, on or about June 4 and retroactively to May 19, Respondent unlawfully increased the wages of its employees.

b. *Evidence*

The principal form of pay increases for hourly employees during the time since Respondent's opening has been an annual Hilton-determined percentage amount. The percentage amount controlled overall pay improvement for employees of a given property by department. The time of an increase for individual employees was their anniversary date of employment, and coordinated with an annual performance appraisal. For Respondent's first full year of operation throughout 1991 the percentage of such annual salary increase was 5 percent.

When Hilton established its annual salary increase for 1992, Gregg distributed a memorandum dated January 15, 1992, announcing this amount to his supervisors and managers. The chosen amount was an increase of up to 3.5 percent, and Gregg's memorandum acknowledged this amount may be taken as disappointingly low. The supervisors and managers nevertheless had an obligation to communicate news of the amount to employees. As to this he wrote, ''Employees cannot be misled into believing that this will change.''

Gregg issued a memorandum of comparable tone and content when Hilton's annual salary guidelines for 1993 were known. This communication, dated January 20, informed of the potentially disappointing 3-percent amount, and again cautioned supervisors and managers not to mislead their employees into believing that the set amount would change.

Kosinski had learned of employee dissatisfaction with Hilton's annual salary increase percentages even as to 1992 when he was still employed in property operations. He carried this awareness into his position as director of human resources. Kosinski felt it was a hindrance, along with Respondent having dropped a policy in early 1992 of granting step increase pay hikes to the employer's ability for reducing turnover and maintaining employee morale. When he began participating in executive committee meetings along with other major department heads during 1992, Kosinski presented his awareness of employee feelings on the point. The executive committee saw no recourse at the time, except to hope that the annual percentage increases permitted by Hilton would begin to show improvement. Kosinski maintained his basic belief that Respondent was not ''competitive'' in the wages it paid.

Kosinski also knew that employees were particularly unhappy with Hilton's limit of the annual salary increase for 1993 to 3 percent. Such concern was often associated to their increased health insurance contribution, which in some cases when coupled with only a 3-percent pay increase would actually lower take home pay during 1993.

Kosinski briefed Sherlock about wages at their early March meeting in much the same preliminary way as he had about health insurance. On the wage rate subject Sherlock inquired if Kosinski was in possession of an area wage survey, and learning this was not the case directed that one be obtained before further discussion on the point.

As the month of March passed Kosinski attempted to obtain a survey from some other hotel of the vicinity, but their human resources directors all denied him access to one because Respondent had deliberately not participated in the locality survey. At a point in April he finally obtained a copy through the assistance of Rybar. It was a December 1992 document covering seven properties in Laughlin with a comprehensive list of industry classifications by starting and top rates.

The executive committee soon compared this survey to rates within Respondent's various departments. This analysis convinced Sherlock that increases were warranted in some classifications, and he directed Kosinski, working with Controller Nancy Salzbrunn, to propose details for consideration of an impact on Respondent's overall operating budget. Both a first proposed total of approximately $2.5 million in cost, and a subsequent revision then promptly done to a $1.3 million total, were rejected by Sherlock as too costly. This led to a third analysis, with the executive committee eliminating certain tipped occupations from consideration for hourly rate increase, and lessening other increases where trimming could best be done. From this a third total of $900,000 emerged, and when this satisfied Sherlock he obtained Anderson's approval from which final authority to expend this added labor cost in 1993 was given by Hilton President Raymond Avansino. Anderson was delegated the responsibility to determine its timing, and knowing well how it might interplay wth the Union's campaign he directed it to be implemented immediately.

On June 4 Sherlock issued a letter to all employees, both those who did and those who did not receive one of the wage increases. This announced that a substantial number of the property's employees would be given pay increases effective May 19, a decision assertedly ''based on a survey of wages paid by other hotel-casinos in Laughlin.'' In part, the letter also stated:

> I know the Steelworkers Union will try to claim credit for the wage increases, or say they are not large

> enough, but the fact is that the Steelworkers Union had nothing to do with our decision to give you these increases. If the Steelworkers Union got in here, we couldn't give you these kinds of increases. . . . I want you to know that we are continuing to review the wages here and may make additional adjustments in the future.

The range of pay increases was from 25 cents to $1 per hour. These increases went to over half the employees in the hotel department, and a much higher proportion of employees in the slot department which had not yet been excluded from the petitioned-for unit. A total of 265 tipped employees of the proposed bargaining unit, primarily those in the food and beverage department, did not receive any wage increase under the announcement.

Numerous instances of group or individual wage increases were introduced into the record over a period of late 1990 (chief desk clerk) to May 1993 (accounts receivable senior clerk). These were instances of individual attention to special circumstances or inequities that warranted an individual adjustment in the view of an approving functionary at the property. As such, they do not affect the question of a general hourly rate increase of the type at issue.

c. *Credibility*

There is again no requirement of a traditional credibility resolution respecting this issue. However I recast my impression that neither Kosinski nor Sherlock gave a genuine rendition of the factors which motivated their focus on the question of employee wage increases while the Union's petition was pending. On the contrary both these officials exhibited unconvincing testimony about true beliefs as to what Respondent intended the effects of such increases would be.

d. *Holding*

The doctrine of *Exchange Parts* also applies to this issue, in the sense that a well-timed pay increase of sweeping application was extended and the source of that benefit was emphasized in contrast to, and derogation of, any similar competence possessed by the contesting labor organization. I also believe that decisional language contained in *Capitol EMI Music*, 311 NLRB 997, 1012 (1993), marks it as well-founded precedent here. In *Capitol EMI* the Board adopted the following statement of doctrine as to what might unlawfully dissuade employees from supporting a union:

> The announcement and/or grant of wages or other benefits increases is legally permissible if it can be shown that an employer was following its past practice regarding such increases or that the increases were planned and settled upon before the advent of union activity.

There is first simply no ''past practice'' to which Respondent can point in justification of this extensively spread benefit. A Hilton-determined annual salary increase was not only the one pay increase of general application, but was twice presented as Respondent's last change that employees could expect in this critical term and condition of employment for the entire balance of a calendar year. Had there been a genuine intention on Hilton's part to see that this property remained abreast of compensation levels that would minimize turnover and better assure good morale, Anderson, Rybar, or both of them would have been expected to press local officials for what was sought only after the Union petitioned. I am therefore not persuaded that the entire wage survey search had a true part in what unfolded. I believe instead that Respondent's highest level officials simply chose a broad wage increase as one powerful way to dissuade employees from continuing their desire for collective representation.

As with the issue of health insurance benefit changes I find that Respondent's countervailing authority in *Adams Super Markets* and *MGM Grand Hotel-Reno v. NLRB*, 653 F.2d 1322 (9th Cir. 1981), are distinguishable. *MGM Grand* is particularly significant as a gaming industry example of substantial wage increases granted only 4 days before a representation election. That employer's stated reasons for these increases were concern for high turnover and to better meet growing competitive pressures. The court, reversing a contrary holding by the Board in *MGM Grand-Reno*, 249 NLRB 961 (1980), concluded that economic factors were truly present, including ''intense competition for qualified employees in the competitive Reno labor market'' and the suffering of ''heavy employee turnover.'' What the court found valid there is not what Respondent has advanced here. Employee turnover was not statistically known to be more than an abstract concern in early 1993, and labor market competition in Laughlin was not established by specific evidence to be a factor.

I hold that the General Counsel has achieved substantial evidence to support the allegations of complaint paragraph 8(d).

4. Paragraph 8(e)

a. *Issue*

The issue here is whether, on or about June 22, Respondent unlawfully announced to its employees that it was implementing a complaint resolution procedure.

b. *Evidence*

The subject of a complaint resolution procedure, or something comparable to such a system, is first known to have been presented to Respondent in mid-1991 when Mittwede received a grievance procedure draft from Rybar's office as she had requested. This draft was prominently headed for application to ''Non-Union Employees.'' It was merely filed at that time for future reference.

Early in Kosinski's tenure as director of human resources he undertook what became extensive conversations with Rybar about his inclination to have a complaint resolution board system in place at Respondent. These conversations continued into early 1993, a point in time at which Rybar stated to him she was looking at written material on the topic.

Kosinski's interest in a complaint resolution procedure of some type was rooted in his experience with them in the past, the burden on available time as Respondent's director of human resources in reviewing all disciplinary actions, and the ability of such a procedure to reduce for Respondent the number of discrimination issues that reached courts or other formal and costly adjudication.

On March 17 Rybar distributed a proposed ''Complaint Resolution Policy/Procedure'' to Kosinski and other human resources directors of the Nevada gaming division. This document, circulated for review and comment, contained few procedural or substantive similarities to the earlier draft for Mittwede, and bore a date of April 4 in apparent anticipation of being implemented then. It was received in time for Kosinski to present at an executive committee meeting of approximately that March 17 date.

The document was not enthusiastically received, with some committee members generally opposed and Sherlock of a first impression that it might undermine secondary supervisors. Sherlock had also previously canceled a comparable procedure at the Reno Hilton, one inherited from Bally's prior operation of that casino hotel, and he had replaced the system with a ''chain of command'' directive in which employee problems were simply progressively reconsidered at management levels.

After Sherlock's departure from the Reno Hilton it was reinstituted there. Sherlock's specific disposition of what Kosinski had presented was to suspend discussion on it, remark that a time for review by committee members should be accorded, and perhaps have it considered again in the future.

During April and May such discussion of a complaint resolution procedure did occur in executive committee meetings on three or four separate occasions. Gradually Sherlock began to see some merit in the idea because of his perception that secondary management was weak, that a channeling of the structured type proposed could benefit problem solving, and that it might ultimately prove to be cost saving to Respondent. These gradual changes in outlook led to a consensus of the executive committee that the complaint resolution procedure be installed, and Kosinski was authorized to complete necessary details.

What eventuated was a three-step procedure akin to a grievance procedure in labor contracts, and a complaint resolution board as final arbiter of an employee's unresolved complaint or problem. A representative of the human resources department was designated to break tie votes on this five member body.

By appropriately addressed memorandum dated June 22, Sherlock announced the policy as one similar to that in effect at the Reno Hilton and to be effective at Laughlin on August 1. The memorandum termed the system as ''much better than a grievance procedure under a union contract.''

The delayed effective date to this complaint resolution procedure was done to permit training of human resources personnel and others in its administration. While Kosinski testified to undefined discussions, there was no direct evidence that training of human resources personnel, any of Respondent's supervisors, or nonsupervisory employees took place before July 6, or for that matter even before August 1.

c. *Holding*

There are no credibility resolutions to be made regarding this issue. My assessment of all available evidence pertaining to circumstances as they existed on June 22 is that Respondent acted with improper motivation in announcing the complaint resolution procedure at that time.

The mandatory meetings were complete, or near so, by that date, and Respondent had incessantly pictured to its employees how unionization would be foolish or self-defeating. This complaint resolution procedure complemented the recently granted economic benefits by establishing a concrete system of resolving job disputes between an employee and their supervisor.

In this manner it created what would have superficial appeal to a work force that was known to harbor resentment about unfair and arbitrary treatment by management. Nothing of this nature had existed before, and the invited review that employees could obtain would tend to show that an entitlement to significant procedural rights in presenting one's ''complaint or problem'' had been accorded.

An important noneconomic benefit of sweeping application would have the natural effect of causing employees to abandon their desire for representation by a labor organization. Such a motive must be inferred to Respondent when evidence of long apathetic treatment of such a subject is shown, followed by its rush to fulfillment only after the Union's petition was filed. See *NLRB v. Anchorage Times Publishing Co*., 637 F.2d 1359, 1367 (9th Cir. 1981).

In addition Respondent has not satisfactorily advanced a legitimate reason for making the announcement in late June as it did. An ''extremely close proximity'' to an election date of a grant of benefits provides evidence that an employer intended to influence employee voting in that election. *NLRB v. Anchorage Times*, supra at 1368.

This further sweetening of its policy in such a notable regard was timed to maximize an already impermissible inducement to employees, a factor strengthening the inference that unlawful conduct is shown. *Springfield Jewish Nursing Home*, 292 NLRB at 1274.

In *Reno Hilton*, 319 NLRB 1154, 1155–1156 (1995), the Board reversed an administrative law judge's recommended dismissal of an allegation addressing the reinstatement of a ''board of adjustment'' program there. This reinstituting of an ''internal arbitration panel'' was referred to passingly above in discussing background to the issue here. The reinstatement at the Reno Hilton had been embodied in a memorandum to employees that was issued by the president of that property.

The Board considered a context of the ''variety of ways'' in which the Reno Hilton had committed unfair labor practices, among them the promising and granting of benefits. In the Board's opinion this context would have prompted reasonable employees to view this further grant of a benefit as a conferral done in order to undermine support for a labor organization. *Reno Hilton* provides comparable enough similarity in facts to those present here for further strengthening of an inference that unlawful conduct occurred.

Repondent seeks support for its position from *American Sunroof*, discussed above, and *Clark Equipment Co*., 278 NLRB 498 (1986). But for purposes here the latter case is significant not so much for the timing of announced benefits, rather than the ''theme'' of literature distributed to employees shortly before an election. The Board concluded that employer had confined itself to a lawful expression of views concerning ''economic realities of unionization.'' *Clark Equipment*, supra at 501. I find no support from the case for Respondent's resistance on this issue.

I hold that the General Counsel has achieved substantial evidence to support the allegations of complaint paragraph 8(e).

5. Paragraph 8(f)

a. *Issue*

The issue here is whether, during the period from April 28 to July 6, Respondent unlawfully changed the scheduling and assignment of work of its cocktail server employees by instituting a seniority-based scheduling and assignment policy.

b. *Evidence*

A system had existed among the approximately 60 cocktail server employees of Respondent that created their shift rotation every 3 months. Kosinski knew from 1992 onward that these employees were generally displeased with this 3-month shift rotational system, a displeasure based on constant lifestyle disruptions and related absence of equalized tip income within the group.

This was Cheleen Morgan's classification during her employment from the time Respondent opened. She had individually complained to Beverage Manager Jerry Kersey about the hardships of the rotation system, and was present during the many times that several of the cocktail servers also complained collectively to Kersey about it.

In early May, Muth spoke to Sherlock about changing the system of scheduling cocktail servers. This surprised Sherlock because the Reno Hilton's food and beverage director, formerly in that same position at Respondent, had changed the cocktail server assignment system for such Reno Hilton employees to that very rotational system after canvassing them to find it was their preference.

With this experience to call on, Sherlock merely cautioned Muth to be sure a change would be preferred by the Laughlin employees. He later saw a proposed memorandum describing the intended change, but gave it little attention because the matter involved pure management discretion in how to best run the cocktail serving operation. The subject did not have consideration by the executive committee, and Sherlock denied any connection between the change and the Union's organizing campaign.

On May 21, Kersey issued a memorandum to all cocktail servers, which had been briefly reviewed by Kosinski. The memorandum described a new system, which in essense allowed seniority-based choice of shift and days off, while assignment as between main pit, slot, and lounge stations would be rotated on a daily basis. The memorandum stated that a shift assignment change for cocktail servers was normally to run for a minimum period of 120 days. However indications are that in actual practice any change would instead be of an indefinite duration.

Kersey's memorandum had stated the goal of this change was ''to eliminate turmoil'' inherent in the rotation process, and Kosinski believed the change cured ''inequities'' in the former system. Morgan termed the change as actually alleviating her constant turmoil in rearranging for child care, and she intimated that the change found favor with many other employees of her classification.

c. *Holding*

There are no credibility resolutions to be made regarding this issue. The implementing and timing of this change appears devoid of any legitimate explanation by the employer. A long-existing and much protested system had been perpetuated almost from the time of Respondent's opening, only to be abruptly changed in conformity with extensively voiced complaints about it from affected employees.

There is simply no compelling reason shown for not delaying such an alteration until after the election. The cocktail server group was not one to which a wage increase was planned for imminent announcement at the time, and this change would benefit some of the group by higher tips and a resultant equalization of such income through daily work station rotation.

I am convinced by these factors that it is correct to infer both motive and timing for these changes was to rectify known discontent of that prominent employee group, and to create a further impermissible inducement of that classification employee away from support for the Union.

It is unavailing here for Respondent to rely on *Williams Litho Service*, 260 NLRB 773 (1982). There a narrowly focused issue of a modified workweek and overtime plan was involved. The Board found the employer's ''suspicious'' timing of the change ''strongly indicative of an illegal motive.''

However the allegation concerning this change was dismissed, because evidence of a causal connection was lacking. This distinguishes *Williams Litho Service*, for here the evidence of such a connection is readily inferrable on bases discussed above.

I hold that the General Counsel has achieved substantial evidence to support the allegations of complaint paragraph 8(f).

6. Paragraph 8(g)

a. *Issue*

The issue here is whether in May Respondent unlawfully increased the guaranteed gratuities of its bell employees.

b. *Evidence*

As of early May Respondent was employing about 28 persons in classifications of bell person and baggage handler, either of which might handle customer luggage to and from rooms. Aside from an hourly minimum wage of $4.25 paid to these classifications, employees from both groups earned tips. These could result privately from guests, or as package rates for bus tour operators.

In this latter case a baggage handling fee had been $2 per bag for the bus passenger's complete hotel stay. Of the $1 each way room-in and room-out charge per bus tour passenger, an employee of either classification received 80 cents for each carry.

This issue originates with Sherlock's recollection that either Mittwede or Director of Hotel Marketing Martin Moore told him on or about May 11 how Respondent had a problem in that other Laughlin properties were raising the baggage handling rates charged to bus tour operators. Sherlock commissioned a survey of local competitors, and Moore generated a memorandum to Mittwede dated May 11.

As an evidentiary matter the rates shown do not establish that as truth, however Moore added narrative comment on a $2 charge versus a $3 charge. He noted in a brief closing to his memorandum that there were already contracts with tour bus operators that would apply well into the future at $2 per bag, and Moore added that an increase to $3 could only be initiated on new bookings.

Sherlock authorized the increase for several reasons. He believed that an increase to $3 for baggage handling would best preserve Respondent's historical and desired room occupancy percentage of bus passenger guests at a 30- to 35-percent range. Second he did not want Respondent to show as more economical for tour bus operators in baggage handling fees than a preferred competitor like the Edgewater casino hotel, for this might detract from Respondent's quality image. Finally he believed a morale factor was present, inasmuch as Respondent's baggage handling employees would quickly enough learn of any fee increases at other properties along the river.

The new $3 total baggage handling fee that Respondent changed to resulted in the bell persons higher pay credit of $1.20 per bag each way. Sherlock was not concerned in his evaluation with the two area properties of Circus (Circus) enterprises that were already known to be charging $3, because this was viewed as their own discretionary opting for above market rates.

By memorandum dated May 12 Mittwede informed ''All Bell Department Staff'' that group baggage handling fees would increase from a $2 total to a $3 total per bag, which Respondent had decided on ''to remain competitive'' in the local market where this charge to bus tour groups was going up. Such a rate would apply only to groups booked after May 12, while prior agreements with bus tour operators yet to arrive would have to be honored at the lower rate. Her memorandum concluded with advice that a complete changeover to higher rates could be expected by January 1, 1994.

Ralph Durbin is classified as a bell person who experienced the effect on his income from this change. On the biweekly basis for which employees are paid when they have handled bus group baggage, he sometimes earned $200 to $300 more from the change. After accounting for the differences resulting from the shift being worked and his own physical capabilities, Durbin believed that most other baggage handling employees would also have earned at least this new extra amount.

c. *Holding*

There are no credibility resolutions to be made regarding this issue. Respondent has not offered convincing reasons for having made this increase as a matter of genuine business judgment. It resulted in significant pay increases for this employee component, a pair of classifications that were not destined to be within the group for which a general hourly wage increase was being carefully planned throughout May. This fact gave Respondent an incentive to grant them an income benefit without cost to itself. Sherlock's awareness that employee morale would be improved by this change is simply a concession that Respondent was seeking ways to undermine the reasons why employees might desire the Union.

Respondent had never before increased the baggage handling rates it had in effect. In this instance it was largely based on Moore's hastily done survey, one which even on its face gave no information on the detailed workings of a competitor's fee to bus tour operators. Further, Respondent has incorrectly contended that Durbin's uncontradicted testimony provides no basis for establishing the economic impact of this decision on other baggage handlers. To the contrary Durbin testified expressly to this effect as known to him from overall realities of the bus program. Although having access to those past earnings records Respondent has produced none in contradiction. As with other issues arising as parts of complaint paragraph 8, the timing of this benefit increase is also not satisfactorily explained. No showing was made to justify the immediate change, and to have done so at such a critical point in the Union's campaign provides further reason to infer improper motive on the employer's part.

I hold that the General Counsel has achieved substantial evidence to support the allegations of complaint paragraph 8(g).

7. Paragraph 8(h)

a. *Issue*

The issue here is whether, during the period from about April 28 to July 6, Respondent unlawfully installed air ventilation systems at various beverage work stations within Respondent's facility to remedy complaints regarding the quality of air at such locations which had been voiced by employees.

b. *Evidence*

There are several beverage service bars located in nonpublic areas of the facility. Bartenders and others work at these stations, while cocktail servers regularly approach them to place and pick up drink orders.

Morgan had experienced uncomfortable conditions in a north service bar which became apparent even when the property first opened. She and other employees that were exposed to the conditions found the north service bar hot and stuffy from inadequate ventilation. This was compounded by steamy releases from the glass washing that also took place there. These conditions had been a persistent basis of complaints by beverage employees to Kersey. Morgan was aware that subsequent to April 28 the air quality improved when additional vents were installed there as well as in a comparable south service bar.

Kosinski recalled being approached by Kersey around early spring 1992, and asked whether the property operations department could cure an air quality problem in the north service bar area. Kosinski discussed the request with Property Operations Department Director Bob Boyd, who said that his estimated $30,000 cost of a modification made a cure too expensive to consider.

Kosinski next experienced a particular incident in very late 1992 or early 1993, after he became director of human resources. Muth and Kersey sought his advice about how to handle the situation of a north service bar employee whose doctor had written that the patient's work surroundings required a reassignment because of his sinus condition. The individual was briefly assigned to another service bar, and returned to the north station after about a week when his sinus condition improved and the Employer received a medical clearance for him.

In April Sherlock was visited at his office by two bartenders concerned with the ventilation system in the north service bar. Sherlock soon assembled Muth, Boyd's successor, and the property operations department's assistant director to accompany him for a look at the station. During his brief inspection he was told that the ventilation there was poor and the system antiquated, but a relatively inexpensive fix would provide better air circulation. Sherlock authorized the repair in terms of his sense that a health hazard was present, and to simply ''make that area better for the employees.'' The followup was achieved by personnel of the property operations department, after parts and tools costing $775 were ordered from a supplier on May 14. The repair consisted of installing exhaust fans in both the north and south service bars.

c. *Holding*

There are no credibility resolutions to be made regarding this issue. The sketchy facts known about this subject show at least that air quality in the north service bar was a chronic problem. Attention by management was superficial for several years, during which employees were discomforted by the combination of overly humid air and inadequate mechanical capacity to ventilate the area normally.

Sherlock's responsive actions were prompt as to both an inspection of the troubled scene and his immediate direction for it to be remedied. This all unfolded during a continuing main phase of the Union's campaign, one to which Respondent had reacted with heightened concern about how to better placate employee concerns.

The specific question is whether a legitimate explanation founded in prudent and ordinary business judgment has been forthcoming. Respondent's inaction of the past and the timing of its repairs are valid factors to consider in drawing whatever inference seems convincingly present.

But Sherlock was, after all, in charge of the property, and shown to be an official willing to respond and reconsider established conditions. When pressed to define this management style, Sherlock termed it a ''time sensitive'' concern for employee morale. For example, he personally investigated whether typical usage warranted the limitation of employee parking to only two garage levels of the facility, and expanded on permissible space when it seemed a waste not to do so.

I cannot be drawn into a belief that every change over a more than 3-month period soon after a new chief executive has succeeded to office is unlawful, because it has the effect of improving complained-of conditions. The controlling question is that of motive, and here outside factors of a specific past medical limitation, and ordinary health considerations are present. This second fact stemmed from reports that the chronic ailment of asthma was exposed to the aggravating conditions, with elementary breathing made even more difficult. From the entire evidence that bears on this issue, I decline to draw an inference of unlawful motive. Sherlock essentially acted to correct this particularly tangible problem by reasonably based motive, and inexpensively devised remedy.

I hold that the General Counsel has not achieved substantial evidence to support the allegations of complaint paragraph 8(h).

8. Paragraph 8(i)

a. *Issue*

The issue here is whether, from on or about April 28 to the present, Respondent has unlawfully maintained an application review process designed to screen out those applicants for employment whose employment applications evidence the applicants' affiliation with Union supporters and/or indicia of likely support or sympathy for a labor organization.

b. *Evidence*

The individuals employed in Respondent's human resources department under Kosinski and Hosler during the spring months of 1993, included Employment Manager Elizabeth Moran, Safety Claims Manager Donna Henley, Senior Human Resources Representative Dixie Oropeza, and Human Resources Representative Rosario Rodriguez. Traditional features of the hiring process then involved preliminary review of a written application by a human resources representative, followed by referral of the applicant to a department for interview. Applicants could be responding to advertisements of vacancies, or could merely be walk-ins seeking work.

There were various subsets to these established procedures. Part of the preliminary review included checking the rehire status of applicants who had previously worked for Respondent. Communication as to interview results from the departments involved was originally by ''post-it'' notes, and later, from July 1992 onward, by a ''Recommendation for Hire'' form. This provided for an operating department official to approve the applicant for hire, and a separate space for the human resources department to endorse the approval. The latter step was a confirmation that mandatory drug and alcohol (D & A) screening had been passed. The applicant then obtained a required sheriff's card, either for gaming or nongaming work.

The General Counsel's evidence is that around late March the recommendation for hire form was modified by introduction of a second approval step within the human resources department. This modification added a line to the form, separating out the D & A approval configuration from a general and final approval for hire. During the first several months of operating under the revised recommendation for hire form only Kosinski and Hosler were authorized to make the general approval needed under this second step.

Oropeza testified she was told by Kosinski, in Hosler's presence, that the department would use the new second-step approval while ''looking for people that had friends or relatives working in the casino that were affiliated with the union.'' Oropeza attributed a statement to Kosinski that his reason for the change was because otherwise ''that would make it another yes vote for the union and they would prefer not to have so many yes votes.'' She added that Hosler's related statement, as repeatedly made, was ''We want to make sure that we don't have a lot of people coming in here that are for the union.'' Oropeza also testified that Moran had explained ''the same thing'' when asked why this new and time-consuming change had begun. She placed these numerous remarks as beginning about January. Oropeza also testified that Kosinski had rejected an applicant on this basis at least five times prior to the election, and she recalled that he did so a few times afterwards.

Rodriguez testified that she first heard of the change in January, when Moran said without further explanation that it had ''something to do with the Steelworkers.'' After that Kosinski had instructed staff to be alert for applicants who ''know of the Steelworkers.'' She also testified that Hosler had once rejected an applicant because that person's application contained a reference which ''she [Hosler] viewed as being pro union.'' Rodriguez associated these statements to a later incident, when Hosler was oddly influenced by what she read on the personal references section of an application.

Rodriguez testified further that Henley, acting as an applicant handler, had on three occasions rejected a person because of what the application showed as to a Steelworkers' connection or to a reference shown. Moran was also asserted as reacting at least twice to personal references on applications she was processing. Once was by noting aloud about a reference entry of ''union guys,'' and by a second comparable statement as she entered a question mark on an application with a known ''union guy'' for Kosinski to personally review.

The most extensive amount of evidence bearing on this issue concerns the job applications of sisters Bertha and Maria Castro. The sisters had each sought kitchen worker positions, or alternatively in housekeeping, by applications dated June 2. Rodriguez testified that she felt compassionate toward their personal situations, and noting a particular name as a personal reference told the sisters, ''To be honest, just get rid of those names because you're not going to be hired. Those guys are with the union.''

The sisters' applications were otherwise incomplete, so Rodriguez advised them to add a full 10-year work history and had them agree to ''fix'' the indicated reference names. They made the needed addition of work history, but to Rodriguez' understanding of the situation apparently forgot to change reference names. They were however immediately interviewed in the housekeeping department and approved for employment.

The sisters were then told to return the next day, but on doing so their applications had been mislaid. Rodriguez initiated a search, first with Hosler and from that Hosler went into Kosinski's office with the sisters. Hosler had recognized the inquiry about missing applications as applying to ''the people that have the references, the union references.'' Hosler retrieved the applications for the discussion that followed between Kosinski, herself, and the sisters in his office. Rodriguez next saw Hosler take the sisters into her own office where she provided them with paperwork needed for the D & A testing.

With the sisters out of their presence Hosler then spoke privately to Rodriguez, saying the sisters had revealed they were told about the Union during all the processing. Rodriguez covered herself by falsely denying to Hosler that she made such a remark or intimation, and Hosler warned that as a human resources representative Rodriguez could not talk to people about the Union, or it could lead to termination from her job.

Only Maria of the Castro sisters testified. She had been employed in the housekeeping department at Respondent since June 10. Her version of happenings when they first applied was that they sought only kitchen work, as to which ''Rosario'' told them no openings existed at the time. Maria Castro testified the sisters then filled out new applications for housekeeping, which were jointly reviewed by both Rosario and ''Dixie.'' Rosario then suggested a change in personal reference names, otherwise they could not go to work then ''because Bertha had a son that was in the union.'' To this Bertha Castro remarked that her son was only 5 years old so she saw no reason to make a change to her application. Maria Castro also made no change, recalling that her unchanged reference name was ''Victor Bustidios [ph].''

The sisters then made an intervening trip to the president's office on the executive floor, but were unable to speak with him. On their next return to the human resources department immediately after this inconclusive side trip, they conversed in Spanish with ''Elizabeth,'' who wanted to know the identity of the person telling them ''about the son and the union.'' Bertha Castro said it was Rosario, and Elizabeth responded that such information must be a lie because ''we could work there, there was no problem.''

After this the sisters were then interviewed in the housekeeping department, and told by the interviewer that they were acceptable for hire. This was notwithstanding the sisters having made no change to their applications, and Rosario's caution about why they would not be hired. Maria Castro's continuing description of events became increasingly vague as to time sequence; suffice it that she recalled the sisters each performing a D & A test and obtaining sheriff's cards.

Charging Party's evidence included introduction of employment applications from the Castro sisters dated June 3, which were largely similar to the set dated June 2. These were each identically written as to a desired kitchen worker position, with the second job choice as housekeeping. Both applications showed a change of emergency notification person from Raul Bustillos to Francisco Santana for Bertha and from Victor Bustillos to Francisco Santana for Maria. Bertha also changed all three of her personal references to a different individual. Maria did the same, while deleting the name of Victor Bustillos from the June 2 application.

Respondent's several witnesses from the human resources department testified that the modified recommendation for hire form came into use during the first half of 1993. Kosinski and Hosler fixed it as the month of March, while Moran termed it ''early'' in 1993. Kosinski gave his lead reasons for making the change, as they had been explained then to key personnel Hosler, Moran, and Henley. Kosinski testified that his reasons were (1) to assure the best qualified individual for a job had been identified while hiring was underway; (2) to decrease turnover by a better matching of job requirements with applicant qualifications; and (3) to assure that applications were complete in the several particulars of work history, present employment of relatives at Respondent, and a full personal background disclosure. Kosinski recalled there were happenstance occasions that human resources representatives had questions about the new form, and that he answered them similarly.

During the first several months of the second-step approval practice Kosinski personally reviewed about 80 to 90 percent of the applications cleared for hire by an operating department, with Hosler performing the balance of them. About September Moran and Henley were authorized to perform this final human resources department approval, and Kosinski's amount of direct review began to lessen to an eventual 20 percent. He estimated that initial impact of the change was a 40- to 50-percent rejection rate to applications

that could easily be made acceptable, and an actual final or judgmental rejection rate of an increasingly small amount that never exceeded 3 percent of all applications.

Kosinski voiced numerous denials in his testimony, including that the new review process was not influenced by the Union's organizational drive. He denied explaining to Oropeza or Rodriguez that his intention was to look for references to a union or the Steelworkers, or to weed out persons who might be so associated from their applications. Kosinski also testified that he was out of state on June 3, and knew for significant personal reasons that he did not return to the Laughlin area until June 4.

Hosler vaguely recalled interaction with Maria Castro and her sister Bertha. It resulted after Moran called her to speak with them in Kosinski's office. She learned they were both upset from being told by Rodriguez to change their references to avoid not being hired. Aside from the dismay this caused the sisters, there had been the further complication of delay and misplacing of the applications. Hosler made an apology to them, after confirming their hire into housekeeping as recommended from that department by giving each sister a necessary final approval. Her last dealing with these applicants was to see them off for D & A testing.

Hosler then spoke with Rodriguez for the first time about the Castro sisters. She expressed her concern to Rodriguez that she had cautioned the sisters to change their applications, saying this could subject Rodriguez to disciplinary action. Hosler elaborated to Rodriguez that the reason for her concern was that the sisters had felt discriminated against, which was not the policy of the human resources department to do. Hosler rendered denials of the type done by Kosinski, in asserting that she had never stated to Oropeza or Rodriguez that the human resources department had a concealed practice of screening out applicants who showed an inclination or affiliation that would suggest that person to favor unionism.

Moran testified that she had provided input to the new policy of a second review. It had also been her experience that a closer look at application qualifications was necessary, and that a full 10-year job history should be completed as often not previously done. As to her own judgment after authorized to approve applications, Moran estimated she had ultimately rejected no more than 5 percent of all she reviewed.

She recalled Oropeza bringing her an application to review on four occasions, and that this had also been done by Rodriguez a couple of times. As to applications presented by Oropeza, Moran had rejected the person three times. She testified to informing Oropeza that her reasons on the several occasions were (1) that the applicant's spouse worked in Respondent's security department which disqualified a relative from employment; (2) that a housekeeping applicant showed a disqualifying felony conviction for burglary; and (3) that a cocktail server applicant had no prior experience which would particularly conflict with Respondent's policy of hiring from within for that position. Moran expressly denied ever making a statement to Oropeza or Rodriguez that would be incriminating on the issue involved. Henley also denied being a participant in an applicant screening process of the type here alleged, or that she ever rejected applicants because their references showed apparent association to the Steelworkers.

Respondent produced 68 employment applications, which by stipulation between the parties were those of persons currently employed by Respondent. Only about four of these applications were dated prior to the July election. Respondent's counsel represented these applications to have been garnered after a search of personnel files to develop data that individuals were hired for employment notwithstanding certain disclosures on their applications. There were distinct categories to this overall group, in keeping with the suggestion that Respondent was not disposed to be weeding out applicants with past employment associated to unionism or application references so associated. The categories were (1) 8 persons giving a reference name from Respondent's unionized property operations department; (2) 3 persons having previously worked in a unionized setting; (3) 6 persons giving reference names of individuals appearing in the ''real superstars'' document; (4) 35 persons giving reference names of individuals appearing in the ''Declaration of Independence'' document; and (5) 16 persons showing previous employment in the often unionized agricultural industry.

c. *Credibility*

Preliminarily, there are factors to relate insofar as the General Counsel's witnesses are concerned. In part these factors associate to, and explain, the introduction of complaint paragraph 8(i) as a separate allegation brought under Section 8(a)(1) by successful motion to amend the complaint done on February 21, 1995.

Oropeza was first employed by Respondent as a human resources representative in mid-1991, and became a senior human resources representative about 2 years later in May. She was terminated from employment in January 1995, after a suspension from work effective January 9, 1995, and a second suspension extending until January 19, 1995, when her termination became effective. The causes of her termination were a claimed slowness in filing her work and an infraction involving use of her timecard. From these circumstances Respondent argues that Oropeza has an especially strong incentive to testify against the interests of her former employer.

Rodriguez was first employed by Respondent in its housekeeping department, and transferred to the position of human resources representative in January. She continued in that position until March 1994, when she became a benefits clerk in the human resources department. She was suspended from work in December 1994, and soon terminated effective December 22, 1994, for improper taking of company property from the premises. Respondent again contends that Rodriguez should be discredited because of a strong motive she would have to testify against Respondent's interests.

Maria Castro was still an employee of Respondent at the time of her testimony. She had appeared reluctantly, and only after coaxing by Armenta to be interviewed by counsel for the General Counsel. Maria Castro had also conversed with Moran for advice as to whether testifying would jeopardize her job. However she revealed this conversation with Moran only after first denying any contact with the human resources department prior to, and in connection with, her becoming a witness. From this Respondent argues that such a false denial undermined her credibility, which was otherwise extremely inconsistent and convoluted as to a sequence of events and the realities of what she experienced.

This vigorously litigated issue also resulted with frailties in the testimony of Respondent's witnesses, coupled with earnest argument by the General Counsel and the Union that strong reason to expect employer-favoring bias would also be present. All such matters are considered in reaching credibility assessments, which are made particularly difficult by the manner of witnesses' expression, incompletely explained circumstances, and the several admitted revisions in testimony. In the last analysis demeanor factors have been highly influential in the process.

Oropeza impressed me as one that did not recall her past experiences in fully accurate detail. However the key point is whether she was introduced to Respondent's alleged plan to distort the composition of its work force, and carried out her hiring duties thereafter with knowledge that this affected all who applied for work in the potential bargaining unit.

I am persuaded by her demeanor that this much of her testimony was accurately and truthfully given. The contradiction of fact as it arises in the context of the small and closely integrated human resources department is sharp and critical. From the extensive verbal interactions of such a function, Oropeza claims to recall the express statement from her superiors that a limitation on the hire of union-leaning individuals would be attempted. This is not a comment that could be easily misunderstood. I conclude that Oropeza was given an instruction to this effect by Kosinski, that it was reinforced by Hosler, and that in occasional dealings with Moran and Henley when a specific question arose it was a known premise of the situation to be dealt with. I credit Oropeza as to this much of her testimony, and use it as a basis to establish accepted facts that shall control a disposition of this allegation.

Rodriguez' testimony was comparably irreconcilable in various regards. However here too the point is whether she truthfully asserted that her superiors had disclosed an intentional means to limit the number of union-leaning persons it would hire. I assess Rodriguez as a witness of convincing demeanor when testifying particularly to this aspect of the case. It is unavoidably a matter of choosing one version over a conflicting one, and I was impressed by Rodriguez in describing what she was told that it was a candid recollection from the past. On this basis I believe that valid corroboration has been provided to the most critical element of this allegation.

I credit Rodriguez fully to this extent. I do, however, note she was mistaken in placing Kosinski as present on June 3 when Hosler spoke with the Castro sisters in his office. There are two other oddities to her testimony that are disturbing, but not so much as to affect the basic credibility asessment. One is that I doubt her awareness of the screening plan was reinforced at a formal staff meeting of the human resources department. It would not seem likely that such an extreme tactic would be disclosed to persons not having a need to know. That would include specialists and clericals, who did not have regular contact with job applicants but did attend the periodic staff meetings. Second, Rodriguez referred to performing certain application coding by numerals, which I doubt was the case from all that is known and represents her pure mistake or confusion on this minor point.

The testimony of Maria Castro was the most confused and vacillating of all that the General Counsel presented on this point. But the immediate question in whether or not Rodriguez told her that names on her application, and that of her sister, would likely disqualify them from employment because they tended to show affiliation with union-identified persons. From the perplexing demeanor of Maria Castro, complicated by her testimony having been given via an interpreter, I am convinced that on this narrow point she was correct in her recollection and steadfast in expressing it. I credit Maria Castro in that she supports Rodriguez as to why the sisters' applications were changed.

From these credibility resolutions it is logical that Respondent's contradicting witnesses are to be discredited on this issue. But an even more persuasive basis exists to do so for other reasons. I am satisfied that Respondent's witnesses not only succumbed to a slanting of their testimony for biased reasons of institutional loyalty to Respondent, but did so in such palpable discomfort that their insincerity dictated the more inviting choice to make.

Kosinski faltered noticeably in tone, pace, and mannerism of speaking when drawn to deny that Respondent had created a spurious explanation for the second review process with its modified recommendation for hire form as a mechanism to best carry this out. His extensive testimony over many days of hearing provided an excellent backdrop for contrast in how he spoke to the ''applicant screening'' issue. It had been, after all, his own creation; one not discussed with Sherlock or the consultants but instead housed intimately within only the workings of his human resources department. In this sense much was at stake in winning rejection of testimony by Oropeza and Rodriguez, supported obliquely as it was by Maria Castro.

I have the conviction that Kosinski knew the truth to be as these adverse witnesses had presented it, and the experience of testifying on this narrow point rather than grander matters of policy and management brought on a suspect change in his assurance. I noted earlier in this decision that Kosinski sought to evade uncomfortable concessions, and that aside from these slantings I would in a particular regard reject his testimony in a full sense. This is the instance, and on settled factors of demeanor, as best and dispassionately they could be watched, I discredit Kosinski's testimony in which he denies establishing a secret motivation to the applicant review process.

I discredit Hosler on demeanor grounds among others, as to what was known to her about this critical factual question. Her denials were faintly and hesitantly voiced in a manner creating doubt that she took comfort in her own words. Besides this unconvincing demeanor, her testimony was decidedly unreliable, evasive, and often given more with an appearance of resigned convenience rather then genuine honesty. Her reversal of testimony after an overnight between hearing sessions, and a prompting telephone conversation with Kosinski, was starkly illustrative of a person bent on contrived offerings to the record. The change from one day to the next in the supposed extent of what she recalled about the Union's campaign, and when knowledge of it came to her attention, was a telling indicator that her veracity was largely lacking. In essence Hosler displayed a rather stubborn disdain for the truth, and I reject what she has asserted regarding material elements of this issue.

The testimony of Henley was given in near-quaking and unconvincing delivery at its critical points. I sensed her extensive discomfort, and saw mannerisms of gesture and coun-

tenance that made it appear she was fabricating. Henley sought to evade the concession that she had an early awareness of the Union's campaign. Her ultimate revelation that she had picked up union flyers in the women's locker room provided a near-dramatic contradiction to her earlier perfunctory denials of what she learned after the Union began its campaign. I discredit Henley insofar as her testimony is in conflict with that of Oropeza and Rodriguez.

Moran also presented as a witness of doubtful veracity. She delivered her various denials of fact or comment with furtive-appearing uneasiness, and voice wilting to a near-whisper in response to critical questions. Her demeanor had much the same qualities as influenced me with Henley. Additionally Moran was similarly evasive about her awareness of the Union's campaign, and details of the Castro sisters' episode about which her involvement was clear enough from other sources in the evidence. This combination of factors, her demeanor being paramount among them, persuades me to discredit Moran on the critical point of whether or not a concealed motivation to screen out possible ''yes'' votes was in place as a hiring policy during the 3-plus months preceding the election.

The testimony of Henley and Moran, plus to a lesser extent that of Hosler, is also made infirm from the fact that they were instructed to undertake randomly collective review of the Oropeza and Rodriguez testimony before themselves being called as witnesses. This too became a matter of initially attempted denial, however what came out was that Hosler had provided transcripts of the February 1995 testimony by Oropeza and Rodriguez to Henley and Moran, drawing their attention to instances in which they were named and discussing how their own responsive testimony should be given. Kosinski was occasionally present as this activity took place within the human resources department as the time approached for Henley and Moran to be called as Respondent's defense witnesses.

In the posthearing brief the General Counsel has renewed an unsuccessful motion to strike testimony of Hosler, Moran, and Henley, and now adds that of Kosinski as part of the requested sanction. The original sequestration order of June 9, 1994, made at Respondent's request, carried the implication that persons known and expected to be called as witnesses would not be present in the hearing room during testimony of others. In *Unga Painting Corp*., 237 NLRB 1306 (1978), the Board discussed its sequestration practices during formal proceedings of the agency in terms of Rule 615 of the Federal Rules of Evidence. While Unga largely concerned the question of whether and when to excuse discriminatees from a sequestration order, there were also generalized observations of the theory of sequestration. The Board noted the rule as a preventative one, intended ''to minimize fabrication and combinations to perjure as well as mere inaccuracy.'' It was also thought to aid ''in detecting inconsistent testimony among different witnesses . . . by preventing subsequent witnesses from learning from earlier cross-examination covering the same subject.'' *Unga*, supra at 1307.

In *Greyhound Lines*, 319 NLRB 554 (1995), the Board adopted a model statement to be used at the outset of a hearing where sequestration has been requested. This model statement included the following language:

> Under the rule as applied by the Board, with one exception, counsel for a party may not in any manner, including the showing of transcripts, inform a witness about the content of the testimony given by a preceding witness, without express permission of the Administrative Law Judge. The exception is that counsel for a party may inform counsel's own witness of the content of testimony, including the showing of transcripts, given by a witness for the opposing side in order to prepare for rebuttal of such testimony.

Greyhound Lines postdates the hearing in this case. In addition the Board has not condoned, but never striken, testimony where with sequestration in effect witnesses have reviewed transcripts or conferred together. The observation accompanying disapproval of such activity is, instead, that testimony of those who have been educated by a transcript or conferring together be closely scrutinized. *Zartic, Inc*., 277 NLRB 1478, 1481 (1986). The model statement of *Greyhound Lines*, applying as it does to future cases, could well be the foundation for striking testimony then as is here requested. Prior Board doctrine however did not support such a sanction. I reaffirm my ruling that the General Counsel's motion to strike testimony be denied. See *Gossen Co*., 254 NLRB 339 (1981); *Robin American Corp*., 245 NLRB 822, 825–826 (1979).

d. *Holding*

The credited evidence shows that Respondent engaged in a conscious effort to dilute support for the Union through artificial hiring standards applied over several months prior to the election. While exact time lines cannot be established, the preparation for additional screening was undertaken when the modified recommendation for hire form was introduced, and new applicant review standards developed by Kosinski. The Union's petition was so close in time to the mid-March action, that it is tantamount to being the influencing reason for such a change to be maintained after the idea first appeared. Respondent's officials were well versed in representation case proceedings, and would anticipate a direction of election in some significant regard after passage of only a few months. This window provided ample opportunity to limit the number of union-leaning employees among the newly hired, by the internal device of simply disqualifying those who were closely enough aligned in their personal lives as to name a union adherent or suspected sympathizer on their application. What does emerge from the credited evidence is that the intention to so distort a bargaining unit was present, and in an unknown number of instances successfully accomplished.

The Castro sisters' experience, tangled as it was in terms of a satisfactory statement of facts, supports the conclusion that such a scheme was afoot. It is more Respondent's reaction to learning the Castro sisters were told they should substitute a name on their applications, than the fact that they were so told, which is significant. Had the applicant screening system not been in effect, Hosler would have had reason to discipline Rodriguez for falsely stating such a devious strategy to an outside person. The fact that she did not makes her scolding of Rodriguez more in the nature of a rebuke for disclosing the matter, rather than a reprimand for misrepresenting Respondent's basic hiring process. A major employer

would ordinarily have concern enough with suspected defects in its hiring practices, without the added fear of liability because one of its agents gave the false illusion of yet another one.

Collateral questions such as how the two Castro applications came into existence, and why Hosler gave hiring approval to persons targeted for rejection cannot fully be answered. I conclude that extra applications were generated from some confusion of just what Rodriguez meant by her words, and they ended up as surplus within Respondent's hiring records. What is established is that Victor Bustillos was a union card signer, having done so on April 5 giving his employment as being within the stewards' department (G.C. Exh. 139, H–574). I am aware that several employee witnesses in this case referred to Bustillos passingly as their supervisor. Also the pleadings term him a statutory supervisor, although a certain posthearing motion from Respondent shows he resigned in late 1993 from a ''kitchen worker'' position. Without further explanation of his status being in the record, I conclude he was a person whose mere name on an application would jeopardize the applicant as an individual that Respondent could view as union-leaning within the objectives of its screening program. I believe Hosler had little recourse except to approve the sisters for hire. It is true, after all, that the entire screening system was inconsistently random based on circumstances of each applicant.

I have considered the matter of Respondent's production of 68 applications, showing the hire of persons not thought likely to pass through the claimed sieve which the screening process was asserted to be. I am uncertain whether Respondent continues to rely on this stipulated material, for no reference to it appears in its brief. However beyond that the 68 applications, individually or collectively, are too conjectural to impact a finding on the issue. Furthermore this matrix of documentation about an extensive timespan lacks any applications from persons who were not hired; another reason that the entire exercise is conjectural.

In *M. K. Morse Co.*, 302 NLRB 924 (1991), an applicant was abruptly denied employment when casual conversation with the hiring official caused this official to develop, while attempting to mask, a ''suspicion that [applicant] shared the prounion views'' of a job reference. The Board found this to be unlawful screening, in a situation largely parallel to the issue here.

I hold that the General Counsel has achieved substantial evidence to support the allegations of complaint paragraph 8(i).

9. Paragraph 9 allegations (introductory)

Here it is alleged, in introductory manner and pertinent to all allegations of the subparagraphs to paragraph 9 of the complaint, and which Respondent denies, that on various dates during the period from April 28 to July 4, Respondent, by representatives of the consulting firm Flores, Lopez and Associates, who are sometimes specifically identified by name in a subparagraph to paragraph 9, unlawfully engaged in particular acts and conduct at Respondent's facility in violation of Section 8(a)(1) of the Act. The 12 operative allegations that associate to this introduction follow in serial order.

9a. Paragraph 9(a)

a. *Issue*

The issue here is whether Respondent, by a person from the consulting firm, unlawfully threatened employees that wages and benefits would be reduced or eliminated if they selected the Union as their bargaining representative.

b. *Evidence*

Jose Diaz Orozco is a former ware washer in Respondent's stewards department. He testified to attending four or five mandatory meetings conducted by Flores, Lopez, or Casillas, each of whom spoke to the employees in Spanish. In the course of these meetings, which ''pretty much . . . all dealt with the same thing,'' Consultant Lopez said that if the Union won employees would lose ''all the benefits.'' This consequence was also shown to those in attendance by being put up on a blackboard at different times by each of the consultants. Lopez also said Respondent would ''lower the $4.25 [hourly] rate.'' In another phase of Diaz Orozco's testimony he recalled Lopez saying the employees would earn $4.25 if the Union won its campaign.

Jose Moreno was also a ware washer, and continuing in employment with Respondent at the time of his testimony. Moreno attended several mandatory meetings conducted in Spanish by any of three men. At each meeting ''movies'' were shown, and in the ''little bit'' of additional discussion by the consultant at any particular meeting employees were told that Respondent could lower their wages and they could lose benefits if the Union came in.

Arcelia Cardenas was a guest room attendant in the housekeeping department, and continuing in employment with Respondent at the time of her testimony. Cardenas attended several mandatory meetings conducted in Spanish, and at which videos were shown. She testified that the employees were ''pretty much always [told] the same thing'' at these meetings, because the men conducting them ''repeated themselves a lot.'' She was told that Respondent would lower hourly wage rates to $4.25 if employees brought in the Union. Additionally the person directing one of the meetings said employees would lose a lot of benefits if the Union came in.

Amanda Vasquez was also a guest room attendant in the housekeeping department, and continuing in employment with Respondent at the time of her testimony. Vasquez attended mandatory meetings on an approximately weekly basis, recalling that Lopez conducted her first meeting and Casillas did the rest of them. Both these consultants made their presentations in Spanish, and employees were paid for attending even if the meeting carried into overtime. The meetings included showings of movie tapes. Vasquez recalled being told that employees would lose a lot of benefits and have their hourly wage rates lowered if they voted for the Union. Flores, Lopez, and Casillas each denied making any statement of the type described by witnesses Diaz Orozco, Moreno, Cardenas, or Vasquez. Casillas particularly testified that his oral presentation at mandatory meetings was in all cases consistent with the video.

c. *Credibility*

I was not convinced from the manner of Diaz Orozco's testimony that he correctly summarized what any of the consultants told him with respect to a loss of wages or benefits as a result of unionization. Diaz Orozco simply did not impress as one who drew from the extensive images and verbalisms of the mandatory meetings an accurate version of remarks made by any of the consultants. I credit him only insofar as the lawful minimum wage of $4.25 hourly being mentioned by a consultant, and that benefits were referred to as repeatedly done in the content of videos. Beyond this I did not have a sense from Diaz Orozco's demeanor or forcefulness of testimony that he truly recalled a consultant warning that wage rate reductions and loss of benefits would necessarily or predictably follow an election win by the Union.

I am similarly disposed with regard to the testimony of Moreno. This witness, equally to Diaz Orozco, was not of a convincing demeanor when he asserted that a consultant made any oral statement about adverse change in wages or benefits beyond what video content and narration told about the realities of collective-bargaining negotiations. I do not credit Moreno to any greater extent than this.

Cardenas also failed to convince me that a consultant made threatening statements about the loss by employees of wages and benefits in the absolute fashion she described. Her testimony was diminished still more by an overuse of leading questions during direct examination. Along with other witnesses of the General Counsel on this issue, I am satisfied from her testimony that a $4.25 hourly wage legal minimum as well as the subject of benefits was mentioned to attending employees at mandatory meetings. However this was not said to the effect that lowering such terms and conditions of employment *would* be done by Respondent on successful organizing by the Union. I credit Cardenas only to such a limited extent.

Vasquez was even less convincing in her demeanor, and generally appeared to be a person incapable of correctly summarizing the remarks given by any of the consultants. Her testimony was extremely generalized to the point of vagueness. I credit Vasquez only to the extent that wages and benefits were mentioned by a consultant, but not in any consequential way beyond what the video content warned about the ''[hazards]'' of collective bargaining. In extending only limited credibility to Moreno, Cardenas, and Vasquez, I am mindful of the Board's inclination to give testimony of a current employee against their employer's interest a status ''especially worthy of belief.'' *Air Products & Chemicals*, 263 NLRB 341 fn. 1 (1982). While influenced by this consideration, and applying it in all comparable instances that arise with other case issues, my particular demeanor impressions are more controlling here.

I credit the general denials of Flores, Lopez, and Casillas only on the specifics of this issue, and as an assessment that does not necessarily extend to other issues grounded in complaint paragraph 9. Lopez also denied even mentioning the hourly rate figure of $4.25 in any mandatory meeting he conducted. I find his assertion implausible from circumstances of uniformity in the General Counsel's witnesses claiming that this much, at least, was said to them. Lopez expressed this denial in somewhat equivocal terms, and given the additional factor I reject his assertion of not uttering a minimum wage amount in the course of discussion and questioning during his mandatory meetings. Furthermore, Flores conceded that during his presentation with the third video he expressly mentioned the $4.25 minimum wage.

d. *Holding*

From credited evidence on this issue, the most that can be said is how video content on the possibilities of economic features of employment going up, down, or remaining the same were simply reinforced in remarks of the consultants. The reference to a $4.25 minimum wage is not intrinsically impermissible, provided it is not presented as an inevitable consequence of unionization. It is also significant that Respondent's third (collective-bargaining) video passingly, but plainly, stated that negotiations with a union could lead not only to less or the same terms and conditions of employment, but also possibly to even more.

The essential factor as to this issue is whether Respondent cast a reduction in wages or benefits as an unavoidable result of unionization, or as its own determined intention. There is insufficient evidence to establish that such was the case. This contrasts, for instance, with *Hamilton Plastic Products*, 309 NLRB 678 (1992), in which the Board adopted a factual finding that the employer's agent said flatly the bringing in of a union would reduce employee pay to a $3.35 hourly ''minimum wage.''

The evidence necessary to meeting a requisite burden of proof on this issue is also weakened by Moreno's recollection, faulty as it might be for other purposes, that the consultants' remarks were termed losses to employees that ''could'' occur from unionization. In *United Technologies Corp*., 313 NLRB 1303 (1994), the Board evaluated the verb form ''could'' as used in a memorandum to employees critical of a bargaining representative for filing an unfair labor practice charge contesting possible changes in job methods. The Board noted that overall context of the memorandum reduced the possibility of employees there perceiving such possible change as a threat rather than a legitimate statement of employer views.

It was also the case in *United Technologies* that the employer there expressed ''a willingness to abide by Board processes and to honor the Board's decision'' with respect to the charge that had been filed. Some analogy is present from that point to the Respondent's video here, in which an excerpt of grainy quality was briefly flashed on a viewing screen as Respondent's supposed refuge in the Board's *Coach & Equipment Sales* decision. While the analogy is weak, it is coupled with the fact that Respondent did expressly envision ''more'' benefits as a possibility included in how a course of labor contract negotiations might conclude. Cf. *Medical Center of Ocean County*, 315 NLRB 1150, 1154 (1994).

Thus the remarks elaborating on incessant video and other messages to employees were not ''out right threats of loss of existing benefits,'' or more than a description of ''give and take'' bargaining coupled with a permissible employer opinion that employees might ''win, lose or draw'' from the process. Cf. *Columbus Mills*, 303 NLRB 223, 235 (1991). In *Mantrose-Haeuser Co*., 306 NLRB 377, 378 (1992), a divided Board evaluated ominous employer predictions about bargaining, and held that the modifying word ''typically,'' as referring to a freezing of wages and benefit programs during negotiations, ''[reduced] the possibility that employees would

reasonably perceive the statement as a threat that their wages and benefits would be lost.'' Cf. *Somerset Welding & Steel*, 314 NLRB 829 (1994); *Butera Finer Foods*, 296 NLRB 950 (1989); *Telex Communications*, 294 NLRB 1136 (1989). This corresponds to the Respondent here once using the modifier ''normally'' in propagandizing with one of its mandatory meeting handouts how collective-bargaining negotiations might well not benefit affected employees at all. I hold that the General Counsel has not achieved substantial evidence to support complaint paragraph 9(a).

Paragraph 9(b)

a. *Issue*

The issue here is whether Respondent unlawfully informed its employees that if they selected the Union as their bargaining representative, strikes, including violent strikes, would be inevitable, thereby creating the impression that Respondent would not bargain in good faith in order to insure that a strike occurred.

b. *Evidence*

Cardenas testified that a consultant told employees during mandatory meetings at which she was present that if the parties were unable to reach a contract after bargaining the Union ''would make us go out on strike.'' She added that the consultant also said it would be required of employees that they all strike as a group, and the Union could impose a fine ''for not attending the strike.'' Vasquez testified passingly on this issue, recalling only that a consultant had said during a mandatory meeting that ''if the [U]nion goes in and the company won't sign the contract then you guys will go on strike . . . .'' Martin Viera, another ware washer continuing in employment with Respondent at the time of his testimony, recalled that at mandatory meetings Casillas told employees that if Respondent and the Union ''could not come to agreement on a contract . . . [they were] going to be on a strike . . . .'' Casillas and the other two consultants all denied making any statements enlarging on the message of the videos as it pertained to strikers, or verbally indicating to employees that Respondent would not bargain in good faith.

c. *Credibility*

I believe the testimony of Cardenas and Vasquez suffers from the same infirmities that I wrote about above. In neither case did their demeanor impress me as accurately recalling any significant expression by a consultant that differed from the video content displayed to employees both graphically and by narration with regard to strikes. Viera appeared more reliable from a demeanor standpoint, but I do not credit the passage quoted from his testimony. As done above I also credit the denials of Casillas and the other consultants that their remarks to employees as to this specific issue went beyond what was repeatedly portrayed in the videos they ran for employees attending mandatory meetings.

d. *Holding*

The total evidence on this issue from accepted testimony is nothing more than Casillas' warning that employees could be called to strike if the parties failed to reach a contract through their negotiations. This is only a partisan claim as to what tactic the other side would perhaps undertake to win desired concessions, and not an indicator that the failure itself of reaching a contract would be preordained by Respondent's refusal to give good-faith consideration to the proposals it faced from the Union. In its ''Facts About Strikes'' handout, a document provided in both English and Spanish, Respondent stated directly ''We are not saying that if the Union wins there will be a strike—that's up to the Union.'' This disclaimer contains the distinction that I believe Viera failed to comprehend when he testified unconvincingly to the less equivocal prediction

Nor did the testimony amount to a forecast that strikes would necessarily be violent in nature. If this is ultimately found to be the case based on other allegations set forth in the complaint, it must rest on an evaluation of the video content itself. However the testimony in support of this issue is devoid of showing that any consultant associated their prediction of a strike with possible violence.

It is useful, and more accurate, to observe at this point that Respondent's message at mandatory meetings was directed more against the claimed motivation of unions in seeking representation rights and contracts than its own aggressive stance against reaching any contract agreement. In *Camvac International*, 288 NLRB 816, 820 (1988), the Board held that ''false and unsubstantiated'' expressions of employer opinion about unions were, when capable of evaluation by employees themselves, privileged statements within the meaning of Section 8(c) of the Act.

Thus the prospect of employees going out on strike was presented more as an employer claim of what the Union would selfishly seek, rather than resulting from employer intransigence in bargaining. The instances of strike violence depicted during the videos, including the then-recent episode from area television broadcasting of outstate tourists being beaten by striking casino hotel workers in Las Vegas, were similarly within the capacity of employees themselves to reasonably evaluate as obvious and admitted employer propaganda. This point is made even more explicitly in *Liquitane Corp*., 298 NLRB 292, 297 (1990), where an employer stating that resort by a union to strike action if it were ''unhappy with bargaining'' was not unlawful, particularly when no assertion that it was futile for employees to select a union was incorporated in the message. See *Sangamo Weston*, 273 NLRB 256 (1984).

Thus the evidence on this issue devolved only to campaign rhetoric by Respondent, without the expression of inevitability that a strike, violent or otherwise, would be forced on employees by an employer failing to negotiate in good faith in contrast to exploiting any superior bargaining power it might possess in the situation. I hold that the General Counsel has not achieved substantial evidence to support complaint paragraph 9(b).

Paragraph 9(c)

a. *Issue*

The issue here is whether Respondent unlawfully threatened employees that if they selected the Union as their representative, strikes would occur which would result in the hiring of replacement employees by the Respondent and loss of jobs by its employees.

b. *Evidence*

In-house organizing committee member Edgar Galaviz was a fry cook in the chefs department. He was hired at the time of Respondent's 1990 opening, and continuing in that employment at the time of his testimony. Galaviz recalled being at a mandatory meeting conducted by Casillas, where the consultant stated in Spanish that employees who try to pressure the company by striking would be without unemployment compensation and would be replaced in their jobs by other people. An added notion recalled by Galaviz was that the consultant also stated they would not be able to secure other jobs because of being strikers.

Diaz Orozco testified that in remarks of Lopez this consultant stated the Union would take employees on strike during negotiations, and this would cause them to lose their jobs to other people taking their places. Cardenas testified that a consultant had told employees that if they went out on strike ''the company could hire people to replace them.'' In a similar vein the testimony of Vasquez and Viera was also elicited in support of this complaint allegation, as quoting the ''union busters'' reference to a loss of jobs for striking and becoming a strike loser as a replaced employee, respectively. Flores, Lopez, and Casillas all made denials that were comparable to those described in presentation of complaint paragraph 9(b) material above.

c. *Credibility*

I was not persuaded from the manner of Galaviz' testimony that he accurately told what Casillas had said on the subject during mandatory meetings. While it is self-evident that Casillas followed video content in referring to likely denial of unemployment compensation benefits and a possible job loss to a permanent replacement employee, the testimony of Galaviz lacked a showing that he truly distinguished what Casillas had said as a possibility from what was claimedly an outright prediction of inevitable consequences. I accorded Diaz Orozco only limited credibility in discussing his demeanor above, and this assessment continues to apply. Cardenas and Vasquez also continue to be assessed as unreliable witnesses insofar as any showing of deviation from video content about strikes, their reason for originating and the consequences that would follow them, is concerned. Viera is credited as to the brief passage from his testimony, but this only amounted to a restatement of an employer's basic right to replace striking employees. I continue to give generalized crediting to the denials of Flores, Lopez, and Casillas on the separate notions of motivation as opposed to consequences raised by complaint paragraphs 9(b) and (c), respectively.

d. *Holding*

An intriguing aspect of this issue is whether there is an implied aspect to it gaining support from Galaviz' claim that Casillas said employees would not be able to ''secure'' a job because of being a striker. While this was not expressly denied by Casillas, neither am I able to credit Galaviz with capturing such a subtle meaning to what Casillas may have been saying. I believe it is more reasonable to construe Casillas' undenied utterance as the caution about how simply going on strike could lead to loss of an existing job by reason of being replaced when the employer chose to attempt continued business operations. There is also the fact that such an interpretation was not fairly litigated, because the allegation phrasing at issue associates a possible job loss with ''the hiring of replacement employees,'' and not a general stigma throughout a labor market arising because a person has once become a striker.

Beyond this there is no credible proof that Respondent's consultants expressed any threat about job loss of strikers, other than drawing employees' attention to the prospect that they might strike and if doing so might be permanently replaced. The videos shown during mandatory meetings extensively treated both such aspects, and did so in their basic content with permissible employer statements of what unionization could bring. I hold that the General Counsel has not achieved substantial evidence to support complaint paragraph 9(c).

Paragraph 9(d)

a. *Issue*

The issue here is whether Respondent unlawfully solicited employee complaints and grievances and promised, directly or by implication, to remedy such complaints and grievances if the employees rejected the Union as their bargaining representative.

b. *Evidence*

Moreno testified that Casillas asked employees during a mandatory meeting whether they had problems at work, and several of them stated their problems. Moreno recalled with some hesitancy that Casillas said he would try, apparently forthwith, to contact Sherlock about them but was unable to get through by telephone. Casillas then seemingly assured the employees with problems that they could get to see Sherlock about them at a later time, but the matter was not again reopened.

Casillas conceded the essential outline of what Moreno testified had happened. By Casillas' strained recollection of events a mandatory meeting on one occasion led to employees of the stewards department wanting to talk with Sherlock about work-related problems. Casillas faintly recalled going to Sherlock's office but found the chief official was out. He told this to the employees, and that he would try ''to set up a meeting'' as soon as he could contact Sherlock by telephone.

An activity not yet specifically set forth as part of overall events during the Union's organizational drive was that of occasional meetings held between a small group of employees and Sherlock. Lopez testified that he interpreted for Sherlock on three such occasions after grievance-like complaints ''cropped up'' from certain employees in attendance at a mandatory meeting Lopez was conducting. He relayed the concerns expressed by such employees to Sherlock, informing him they wanted ''to talk to [Sherlock and] ask him some questions.'' When Sherlock agreed to this the three meetings took place as separate events, and the complaints turned out to mostly concern treatment by supervisors. Lopez disclaimed knowing at the time whether Sherlock had an ''open door policy'' or not, but he testified that Sherlock did express to the employees involved that they first take up their concern with ''people under the president.'' Sherlock's testimony on the point is that he came to several meetings

of this nature ''not to make a presentation but to respond to questions'' about which employees wanted to see him.

c. *Credibility*

There is little contradiction in the testimony of respective witnesses. Aside from variations in detail Casillas did remember being the relay of employee concerns to Sherlock. I believe Moreno attempted to provide the more candid and complete reconstruction of the episode, and I credit him as to its details and inconclusive result. However I also credit Lopez as to his candid-seeming explanation of Sherlock's restrictive practice in seeing employees with problems.

d. *Holding*

The allegation here lacks a necessary factor to show that a violation of the Act has been committed. The missing factor is that such evidence as there is does not show a solicitation of complaints or grievances, only a responsiveness when employees spontaneously raised them. The consultants, and supervisors generally throughout Respondent's facility, were pointedly urged to inquire if employees had questions about the information being increasingly heaped on them about unionization. This inquiry had its emphasis in whether employees gathered an understanding, a sense of knowing at least what the employer was claiming they should consider. This does not amount to the affirmative act of drawing out their problems; an act also associated to whether an implied promise of remedy was present.

In *Bakersfield Memorial Hospital*, 315 NLRB 596, 600 (1994), the Board approved language that an employer's ''expressed willingness to listen to grievances is not sufficient to constitute a violation.'' Also see *Idaho Falls Consolidated Hospitals v. NLRB*, 731 F.2d 1384, 1386–1387 (9th Cir. 1984). The issue involves a mixed question of fact and law. Other aspects of the complaint are yet to be treated, and this subject matter shall then warrant a different outlook. At this point and as to this issue, I see only an attentiveness by Respondent not the more intrusive activity that is alleged to be present. I hold that the General Counsel has not achieved substantial evidence to support complaint paragraph 9(d).

Paragraphs 9(e) and (f)

The allegations in these two complaint paragraphs overlap 9(d) in that they amount to the same accusation by differing choice of words and sentence structure. The General Counsel points to no specific evidence that would constitute even the requisite soliciting or promising, let alone other elements to show a violation of law. I recommend dismissal of both complaint paragraphs 9(e) and (f) on grounds they lack merit by being surplus pleadings in the case.

Paragraph 9(g)

The issue here is whether Respondent unlawfully informed its employees that it would be futile to select the Union as their bargaining representative. The only evidence in support of this allegation is testimony of Marilyn LaFollette that she attended one mandatory meeting held by the consultants, and with some difficulty recalled the person in charge saying that any dues paid by employees would go to the International union and ''we wouldn't benefit from them.''

Respondent's first (introductory) video touched on dues by referring to an unnamed union's LM-2 report, and how that labor organization disbursed its $6 million in dues revenue. By a graphic showing a progressively shrinking dollar bill the video, accompanied by the narrator's ridicule, portrayed that 98 percent of dues income went to union expenses and salaries, with only a resultant two cents on the dollar for the benefit of members.

The General Counsel argues only that the statement recalled by LaFollette, remembered as it must have been from the first and only mandatory meeting she was permitted to attend, meant employees ''would not benefit'' from paying dues which in large part could be destined for use by the Union away from the Laughlin locale. I do not find this sufficiently establishes the element of futility with respect to employees selecting a bargaining representative for which a periodic cost to them will result. There are innumerable other reasons for having a collective representative, and the illustration used by the consultants was an extreme one. It was also susceptible to evaluation, and inquiry to the Union itself, in the many remaining weeks of the campaign following the time employees were first exposed to this startling example. I hold that the General Counsel has not achieved substantial evidence to support complaint paragraph 9(g).

Paragraph 9(h)

The issue here is whether Respondent, by Consultants Patrick ''Patricio'' Lopez and Alex ''Alejandro'' Casillas, unlawfully threatened employees that they would lose all fringe benefits of employment if they selected the Union as their representative.

Diaz Orozco testified that near the end of presentation at several mandatory meetings Lopez, Casillas, and Flores, too, said that ''all the benefits, like clothing, food'' would be lost to employees if the Union won the election. This was described as being a process of each consultant, at a given meeting they conducted, writing down the ''list'' of benefits that would be removed.

I discredit Diaz Orozco insofar as he testified that the benefits being described would necessarily be lost by employees having the Union. The similarities of his testimony to the ''hidden paycheck'' handout of the consultants are so complete that I believe a distorted recollection of seeing this is all Diaz Orozco actually retained. This document itemized about 10 fringe benefits calculated to be worth $4.54 per hour worked, aside from miscellaneous amenities that should be valued supplements to an hourly employment at Respondent.

The document was referred to by the consultants in their testimony as the ''bank book of benefits.'' It was material that Respondent had produced based on actual terms and conditions of employment at the property, and used as a major visual aid to the special ''benefits'' meetings held for all employees near the end of the campaign which were conducted by one of the consultants. These were meetings at which a video presentation was not incorporated.

Such details about the origin, content, and use of the hidden paycheck/bank book of benefits handout are taken from the credible-seeming testimony of Lopez on the point. I note, but discredit, contradictory testimony of Flores that the consulting firm was not present at the ''benefits'' meetings. I reject such testimony of Flores not only because it seems mis-

taken, but because he was admittedly out of town when this special series of meetings was held.

The handout noted only that the total array of benefits, measurable and miscellaneous, were available ''without payment of union dues and most [being] subject to negotiations if a union is voted in.'' This phrasing goes no further that the incessant reminders in Respondent's videos of the uncertainty present in any course of negotiations, but does not rise to the level of a threat of benefits necessarily being lost. I hold that the General Counsel has not achieved substantial evidence to support complaint paragraph 9(h).

Paragraphs 9(i) and (j)

The issues here are whether Respondent, by Lopez, unlawfully solicited employee complaints and grievances and promised, directly or by implication, to adjust them, and otherwise, by Lopez, unlawfully solicited employee complaints and grievances and promised, directly or by implication, to increase benefits and improve terms and conditions of employment if employees rejected the Union as their bargaining representative.

Guadalupe Ordaz Espinoza was a guest room attendant in the housekeeping department, and continuing in employment with Respondent at the time of her testimony. She asserted that at a mandatory meeting Lopez spoke to the approximately 25 employees present in Spanish. He advised them he would play a video and answer questions when it was over.

Ordaz Espinoza recalled that following the video various employees began making complaints about their meals, their supervisors, and the chemicals they had to work with. She testified that to this response Lopez commented about a lack of communication by all involved, and that he would let the top boss know of their comments. When Lopez permitted Ordaz Espinoza herself to make a comment, she said that a company payroll would tell her story about wages being too low. Lopez denied soliciting employee complaints and grievances, or expressing any promise to adjust them.

I readily discredit Ordaz Espinoza's rambling and fanciful testimony. There was little indication from her demeanor that what she presented was more than a vague, unreliable sense of random talk at a relatively large mandatory meeting with unrestrained comment being voiced by numerous attendees.

It is noteworthy that the interpreter for Ordaz Espinoza interjected her own puzzled state as to what the witness was describing on several occasions during the testimony. In terms of the meager tangible assertions Ordaz Espinoza advanced I credit Lopez' denials, and the result is an absence of any probative evidence to validate the allegations here. I hold that the General Counsel has not achieved substantial evidence to support complaint paragraphs 9(i) and (j).

Paragragh 9(k)

The issue here is whether Respondent, by Flores, unlawfully solicited employee complaints and grievances and promised, directly or by implication, to increase benefits and improve terms and conditions of employment if employees rejected the Union as their representative.

Galaviz testified that at the first mandatory meeting, conducted by Flores for employees of the chefs department, he began by asking employees about their problems. When many of those present responded, Flores wrote down all the problems that were voiced. Flores then stated he would provide the list of problems to the human resources department to be fixed. The subjects raised had to do with workbreaks and working conditions.

Viera also testified about the first mandatory meeting he attended. It was conducted by Flores, who spoke in Spanish to the estimated 10 employees present. Viera described how Flores asked each person ''one by one'' if they had problems, and that Flores filled more than one sheet of paper listing them all down. When he completed these notes Flores said he would take the list to Sherlock to be resolved.

Here I credit both Galaviz and Viera over the denials of Flores, who asserted that he had simply never written any notes nor inquired about work-related problems during an employee meeting. In contrast to other portions of their testimony, both of the General Counsel's witnesses spoke in better detail and a more assured demeanor showing confidence in what they described.

Respondent's brief touches only slightly on this allegation, and without a persuasive denial by Flores I accept as fact the happenings at two different meetings as described by Galaviz and Viera. Their version also comports with Flores' concession that he could have been alert to instances of employee dissatisfaction with their current terms and conditions of employment, for which he would pass on such information to the human resources department.

In this instance both elements of a solicitation of complaints and a direct assurance that they would be given remedial attention was extended to employees. This is squarely within the doctrine of *Reliance Electric Co*., 191 NLRB 44, 46 (1971), where, as here, there was no prior practice of soliciting employee complaints or grievances, and that course was initiated by an employer only during an organizing campaign with at least an implied promise of corrective action. See *Hertz Corp*., 316 NLRB 672, 686–687 (1995).

In *Sweet Street Desserts*, 319 NLRB 307 (1995), a divided Board held that unaccustomed inquiry by a supervisor to a union adherent about her problems would reasonably be viewed as ''solicitation of grievances with the implicit promise to correct them.'' The facts of this case have a marked similarity to the issue here. I hold that the General Counsel has achieved substantial evidence to support complaint paragraph 9(k).

Paragraph 9(l)

The issue here is whether Respondent, by Casillas, unlawfully threatened its employees with loss of benefits if the Union won the representation election.

Viera testified that at a mandatory meeting which he talked himself into being able to attend, Casillas ran it by speaking in Spanish to the 10 to 12 kitchen area employees present. He recalled Casillas putting up a list of benefits involving uniforms, food, parking and insurance, that he totalled out in value as a possible deduction from employees' paychecks.

Viera also testified that Casillas explained this total was ''your real income'' to the employees. He was then directly questioned whether Casillas was ''portraying how much you would have to pay for all of those items if the employees brought in the union?'' which Viera affirmed.

I discredit the testimony of Viera here because it amounted to the same faulty and partial recollection of what is in evi-

dence as the ''hidden paycheck,'' and otherwise flawed by a leading question of highly suggestive character. Overall I cannot rely on Viera's testimony, and consider only that he was referring to the known and complete provisions of an admitted consultants' handout.

I have already concluded the ''hidden paycheck'' document does not rise to the level of a threat that loss of its listed fringe and miscellaneous benefits would be a consequence of unionization. I hold that the General Counsel has not achieved substantial evidence to suppport complaint paragraph 9(l).

10. Paragraph 10 allegations (introductory)

Here it is alleged, in introductory manner and pertinent to all allegations of the subparagraphs to paragraph 10. of the complaint, and which Respondent denies, that on various dates during the period April 28 to July 4, Respondent, by named individuals asserted in all instances to be its agents, unlawfully engaged in particular acts and conduct at Respondent's facility in violation of Section 8(a)(1) of the Act. The 48 operative allegations that associate to this introduction follow in serial order.

10a. Paragraph 10(a)

a. *Issue*

The issue here is whether Respondent, by Sherlock, unlawfully solicited employee complaints and grievances and promised, directly or by implication, to remedy such complaints and grievances if the employees rejected the Union as their bargaining representative.

b. *Evidence*

Diaz Orozco testified that he was part of an employee meeting with Sherlock that took place around early June. The employees had requested this meeting for Sherlock to hear their complaints. Casillas was present to interpret for Sherlock. Diaz Orozco attempted to present a complaint about a foot injury to employee Thomas Soto, but Casillas told him not to talk for Soto. Then Soto explained his foot injury and the inconsiderate reaction he experienced from the employer. After hearing of this Sherlock said he would solve the problem, but Diaz Orozco does not know whether or how that was carried out.

The General Counsel presented Ordaz Espinoza as a witness regarding this issue, however her testimony as to a meeting with Sherlock about a week before the election does not actually relate to the issue. Instead her vague testimony indicated only that Sherlock wanted a chance to show how things could be better for employees, and used an example of sharing apples to illustrate this. The testimony of Vasquez was also offered on this issue. She recalled the last mandatory meeting of employees from her department included an appearance by Sherlock, whose remarks were interpreted in Spanish by a consultant. As to this issue Vasquez testified that Sherlock said if the employees had any problems to go straight to his office where he would talk the problems over and fix whatever they had.

Sherlock denied soliciting complaints or promising remedies in any episode that could recognizably associate to this issue. Casillas testified about an unspecified occasion from among the few times that he interpreted for Sherlock at meetings of stewards department or housekeeping employees. He made a Spanish language translation of what Sherlock said, to the effect that while he had an open door policy this did not mean employees could ''skip your supervisor'' to come directly to Sherlock.

c. *Credibility*

I do not credit witnesses Diaz Orozco, Ordaz Espinoza, or Vasquez as to the express language of this allegation. Diaz Orozco did not appear to have sufficiently reliable recall of what was said beyond the fact of Soto's foot injury being discussed. Ordaz Espinoza was again woefully rambling and presented testimony bordering on unintelligible to which I give no weight. The demeanor of Vasquez was, as before, not of convincing expression, and I am not persuaded from what she offered that Sherlock truly invited direct access to himself whenever an employee felt aggrieved.

It cannot be known whether the particular meetings about which Casillas testified are the same ones to which the General Counsel's witnesses referred, but this is potentially so. The time frame that Casillas recalled is a comparable fit, along with the classification of employees being addressed on the occasions. In any event I credit Casillas' well-expressed recollection of how he explained Sherlock's policy on the subject to Hispanic employees.

d. *Holding*

The consequence is a lack of probative evidence that Sherlock invited the complaints and grievances of employees, or did more than electioneer for a union defeat and depict himself as a worthy executive in whom employees should be confident as to his fairness. This issue turns on narrow factual grounds, which are not established from credible evidence to result in a violation of the Act.

Treatment of this issue provides the opportunity for fuller discussion of an ''open door'' policy as Respondent may have established it in regard to employees seeing Sherlock impromptu with their problems. Former property president Gregg had not offered such a policy, and Sherlock both believed in and expressed to employees a ''chain of command'' requirement for the resolution of job problems. This approach was, however, compromised by Kosinski's memorandum of June 26 in which an open door to Sherlock was rather freely promised. This memorandum followed closely in time from Respondent's announcement of the complaint resolution procedure. It was highly structured in terms of progressive consideration of employees' job problems until final disposition by an internal board. The procedure did not at all intimate, however, that the property president would become involved.

The credible-seeming testimony of Casillas is also pertinent here, in his assertion of Sherlock telling employees they should not skip their supervisors or managers. I conclude that extensive attention to the phrase ''open door'' is misplaced in the overall happenings of this organizing campaign. It was not clearly presented to the work force, except for the abberation that Kosinski's June 26 memorandum contained. Sherlock did not consider that this memorandum altered or diminished his chain of command policy. He was clear in testifying about a willingness to see employees once they had

exhausted the chain of command policy, and invariably did so when such a person called him.

I believe that Sherlock used the term ''open door'' no more than as a concerned-seeming reflection of Respondent's interest in its employees. Thus all issues of soliciting and promising to remedy complaints or grievances should be analyzed in traditional terms that apply to this doctrine. I hold that the General Counsel has not achieved substantial evidence to support complaint paragraph 10(a).

Paragraph 10(b)

The allegation in this complaint paragraph duplicates 10(a) in that it amounts to about the same accusation by differing choice of words. The General Counsel offers no more evidence here than was done in regard to complaint paragraph 10(a). I recommend dismissal of complaint paragraph 10(b) on grounds it lacks merit by being a surplus pleading in the case.

Paragraph 10(c)

The issue here is whether Respondent, by Sherlock, unlawfully threatened employees by telling them that if they selected the Union as their bargaining representative, all wages and benefits would be put on the table during negotiations with the Union, that their wages would be reduced, and that employees would pay for parking, uniforms, and meals.

Cardenas testified that at a meeting of employees from various departments in early June, Sherlock spoke to them in English which a consultant translated to Spanish. Sherlock said that all benefits such as food, uniforms, and insurance would be negotiable with the Union, and he would not have to give what he was unwilling to do. Sherlock demonstrated the point by displaying a dollar bill, which he said he would simply keep although that much of an increase was what the Union might be seeking. His interpreting consultant added to this by placing three piles of coins from his pocket representing value for the Union, the Company, and the employees. An apparent comment made by Sherlock about this demonstration with coins, was that it also illustrated how economic demands in bargaining could be split into parts and divided among the interests involved.

Sherlock denied making any flat statement to assembled employees at such a time that wages or benefits would positively be reduced. Casillas testified about an occasion when he translated for Sherlock at a meeting of housekeeping employees in approximately mid-June. Sherlock had illustrated a point about collective bargaining by creating two piles of coins, keys, or bills from the contents of his pocket. Casillas recalled that Sherlock's demonstration was to explain to employees a simplified version of collective bargaining by showing from the movement of these piles on a table that bargaining demands can be exhanged from one side to the other.

I discredit the testimony of Cardenas to the extent she asserted that Sherlock spoke in absolutes about the prospect of negotiating with the Union. Her demeanor did not impress me as showing a true comprehension of the remarks made. I am satisfied that Casillas has provided the accurate version of happenings that give rise to this allegation of the complaint, and that what was stated and demonstrated was nothing more than another instance of Respondent's numerous messages in which the unpredictable outcome of collective bargaining should be understood. Relatedly, I therefore credit Sherlock as to his denial of any actionable statement relating to this issue. I hold that the General Counsel has not achieved substantial evidence to support complaint paragraph 10(c).

Paragraph 10(d)

The issue here is whether Respondent, by Sherlock, unlawfully informed employees that if they selected the Union as their bargaining representative, strikes were inevitable, thereby creating the impression that the Respondent would not bargain in good faith in order to insure that a strike occurred.

Cardenas testified that in the same meeting where Sherlock made his demonstration with the dollar bill he had also said ''the [U]nion was going to make us go on strike'' if he did not grant requested increases. She recalled that he spoke of the consequences of such a strike, saying ''they could replace us with other workers . . . to come in and do the work.''

Vasquez testified that at her last mandatory meeting a consultant translated for Sherlock who had appeared to make remarks. Vasquez recalled Sherlock urging employees not to select the Union, but if they did ''you guys will probably go on strike[s]'' if the Company did not sign a contract. Sherlock denied making any statement that a strike was inevitable in contrast to being only a possibility.

I discredit Cardenas insofar as she attributed Sherlock saying the Union would definitely require a strike by the employees. Cardenas again did not persuade me from her demeanor that she had a reliable comprehension of the actual statements made during the meeting about which she testified.

Vasquez seemed similarly unconvincing, and I believe she has simply misrecalled Respondent's repeated assertions that employees should be aware strikes do happen. This allegation makes a particularly narrow contention, and lacks the testimony of credible witnesses to the effect that words uttered by Sherlock, or in Spanish as translated by Casillas, predicted the inevitability of strikes.

I do not find the allegation to have been established by valid proof. I hold that the General Counsel has not achieved substantial evidence to support complaint paragraph 10(d).

Paragraph 10(e)

The issue here is whether Respondent, by Sherlock, unlawfully threatened its employees with reduced wages and benefits if the Union won the election.

The testimony of Ordaz Espinoza, a witness offered in support of complaint paragraph 10(a), was also advanced to support this allegation. Her testimony here was that during a meeting of employees around late June Sherlock had said a ''new negotiating table'' would result in wages ''starting at $4.25.'' The testimony of Vasquez described in treatment of complaint paragraph 10(d) was also associated to this allegation in an enlarged version. Vasquez recalled that at her last mandatory meeting Sherlock had also said employees ''will go down to [$4.25] an hour'' as a result of negotiations.

There are only these two particularly unpersuasive witnesses in support of this further allegation naming Sherlock.

I strongly believe from the demeanor of both Ordaz Espinoza and Vasquez that they are mistaken in recalling any actual remarks of Sherlock on the point. While I have previously found that the $4.25 minimum rate figure arose in discussions with assembled employees, I do not find it was predicted by Sherlock to be a definite consequence of unionization. The consultants' handout titled ''Facts About Negotiations'' had highlighted an absence of guarantees in the process of collective bargaining, expressly stating that ''all current wages'' are subject to negotiations and that the law ''does not protect employees from losing current wages and benefits in negotiations.'' I have no basis from the unconvincing testimony of only Ordaz Espinoza and Vasquez that Sherlock departed from these distinctions in what he said when they were present. I hold that the General Counsel has not achieved substantial evidence to support complaint paragraph 10(e).

Paragraphs 10(f) and (j)

The allegations of these two complaint paragraphs are essentially the same. For that reason I merge them for purposes of discussion. The resultant issues here are whether Respondent, by Sherlock and Don Gallardo, unlawfully informed its employees that their wages and benefits would be reduced if its employees brought in the Union or, otherwise threatened employees that their wages would be reduced and that they would lose other paid fringe benefits if they selected the Union as their bargaining representative.

Moreno testified that during the Union's campaign he was present at a meeting conducted by Sherlock in the office of Executive Steward Johnny West, where Supervisor Don Gallardo translated Sherlock's remarks into Spanish. He recalled Sherlock stating that if the Union were brought in the insurance cost to employees would go up and their hourly earnings would be lowered to $4.25.

Viera testified to being present at a meeting of kitchen employees early in the campaign. Sherlock was present along with Muth, West, and others, with Gallardo translating Sherlock's remarks. Viera recalled Sherlock asking for a 1 year chance as the property's president, and that if the Union came in Respondent's dealings with them would ''start in zeros, and the salary is going to start with $4.25.'' Sherlock denied making statements of the type described here by Moreno and Viera.

On demeanor grounds I discredit Moreno and Viera as to their assertions. In both cases these witnesses appeared unable to present a true rendition of exactly how Sherlock couched his remarks. I recognize that as to instances above, and more to come, the General Counsel's witnesses present a valid framework for what they heard while listening to Respondent's management argue against the Union. However, what controls is the exact phrasing of consequences for which the employer has control, or an inevitability to a predicted outcome of negotiations. It is this exactness that I do not detect from witnesses such as Moreno and Viera, with their display of demeanor being more in the nature of faulty understanding than intended deceit. The result is a void in what must be established to validate allegations such as here at issue. I hold that the General Counsel has not achieved substantial evidence to support complaint paragraphs 10(f) and (j).

Paragraph 10(g)

The issue here is whether Respondent, by Sherlock and Gallardo, unlawfully solicited employee complaints and grievances and, directly or by implication, promised to resolve them if the employees rejected the Union as their bargaining representative.

Diaz Orozco testified that he was present at a meeting of employees around June in the office of West. Sherlock was there to introduce himself as the property's new president, with Gallardo acting as his interpreter. Diaz Orozco recalled Sherlock saying that he was at their service to help employees with any work problems they had in their jobs. Sherlock also told the assembled employees that the doors to his office were open to hear of any job problems from them, and one or two of the employees asked about equipment needed for their jobs. Diaz Orozco asserted that Sherlock answered these inquiries by saying he would take care of everything well.

Moreno testified that he was present at a meeting of employees in West's office during the campaign at which Sherlock spoke with interpretation provided by Gallardo. Moreno recalled Sherlock bringing up the types of problems the employees might have, and Moreno complained to him about unfair warnings from supervisors. Sherlock responded to this saying Moreno could talk to him another time in his office. Numerous other employees also brought up work problems, and Sherlock answered by saying he would try to resolve them. Sherlock also told the employees there ''would be an office'' that they could go to, a prospect that Moreno had not before heard of during his employment.

Viera testified further about the meeting of kitchen employees at which he was present early in the campaign. In asking for a 1-year chance, Sherlock had inquired whether employees had any problems. Viera recalled Sherlock saying there was no need to pay for help in resolving problems, because he could cooperate with the employees in making necessary resolutions. Sherlock said this process of resolving problems together could be done by the employees coming to his office.

Sherlock denied making statements of the nature described by Diaz Orozco, Moreno, or Viera. He did recall a meeting placed as the General Counsel's witnesses testified, where complaints of inadequate steel wool cleaning material, back braces and boots were raised by employees. Respondent then supplied each category of equipment as soon as it could be done.

Here I credit the General Counsel's witnesses based on their demeanor and detail of testimony in regard to this issue. Diaz Orozco was particularly persuasive in the manner by which he recounted Sherlock's remarks on whether or not employees had problems and how they could be handled. Moreno and Viera, while less specific, at least credibly attributed Sherlock with inviting a discussion of problems the employees experienced at work, and giving them to understand he would extraordinarily attempt to alleviate them. In addition the ''office'' which Sherlock referred to according to Moreno was a sufficient intimation about the yet probably unannounced complaint resolution procedure under consideration. I discredit Sherlock on this issue, as his denials were not persuasive nor sufficiently directed to the supporting adverse testimony.

I believe what is established here is both the solicitation of problems from employees plus the direct and sometimes

implied assurance of a resolution. It is in this way that evidence bearing on this issue warrants a different conclusion from complaint paragraph 9(d), above, where *Bakersfield Memorial Hospital* controlled. In *Valley Community Services*, 314 NLRB 903, 904 (1994), the Board held that inequities discovered as a result of unprecedented employer inquiry constitutes an implicit promise of correction ''thereby leading employees to believe that the combined program of inquiry and correction will make collective action unnecessary.'' This becomes the kind of conduct that impermissibly undermines employees' support for a labor organization striving to obtain representation rights for them. I hold that the General Counsel has achieved substantial evidence to support complaint paragraph 10(g).

Paragraph 10(h)

The issue here is whether Respondent, by Sherlock and Gallardo, unlawfully promised its employees increased benefits if they rejected the Union as their bargaining representative.

Moreno testified that at a meeting in West's office Sherlock said he would acquaint himself with wage rates at other properties along the river in Laughlin, and would equal those rates if necesessary to reach the same levels of compensation. No other witness for the General Counsel testified to this particular effect. Sherlock denied making a statement of the type described by Moreno, agreeing only that while meeting with employees in West's office he had once referred to a wage survey about which Respondent ''would remain competitive with the rest of the town.''

I do not credit Moreno as to Sherlock's phrasing on this point. He was introduced to the subject by a leading question, and then pressed to ''clarify'' an already plain answer. I cannot discern from the sequence of questions and answers what it is that Moreno recalled, nor was I impressed from his demeanor that a confident reply was forthcoming. I hold that the General Counsel has not achieved substantial evidence to support complaint paragraph 10(h).

Paragraph 10(i)

The issue here is whether Respondent, by Sherlock and Gallardo, unlawfully predicted to its employees that strikes, which would result in the loss of employees' jobs, were inevitable if they selected the Union as their bargaining representative.

Moreno testified that at the meeting he attended in West's office, Sherlock had said there would be a strike if the employees supported the Union. This, according to Sherlock's asserted remarks, would mean those on strike would lose their jobs because the employer ''could [replace] with other people.'' Sherlock denied making any statement of the type described by Moreno.

I discredit Moreno as to his testimony on this issue. I believe Moreno correctly recalled some portions of utterances made in his presence by agents of Respondent, but could not do so in all instances. Here I am not persuaded from his presentation that Sherlock simply predicted the absolute consequence of a strike by employees after choosing to have the Union. Respondent had amply presented its views about strikes by the videos and its ''Facts About Strikes'' handout. There was an express disclaimer that if the Union won bargaining rights ''there *will be* a strike.''(Emphasis added.) I am satisfied that Moreno had formed an imperfect impression of Respondent's claims about how a strike might occur, and his testimony goes beyond what Sherlock actually said. I hold that the General Counsel has not achieved substantial evidence in support of complaint paragraph 10(i).

Paragraph 10(k)

The General Counsel has withdrawn this allegation on grounds it relates to a happening placed outside the statute of limitations period of Section 10(b) of the Act. The testimony that had been presented on the matter is expressly reserved to constitute background evidence pertinent to the case.

Paragraphs 10(l), (m), and (n)

The allegations of these three complaint paragraphs involve the same episode, so I merge them for purposes of discussion. The resultant issues here are whether Respondent unlawfully (1) by Sal Ortiz, threatened its employees with violence and property damage at the hands of a labor organization other than the Union in an effort to discourage support for the Union, and (2) by Ortiz, Abe Sadka, and Deborah Bell created the impression among its employees that it favored a labor organization other than the Union.

Wilma Miller testified that she was at work on a June day before the Alta Villa Diner opened for business. She was told that Assistant Food and Beverage Director Abe Sadka wanted to see her in the diner. She proceeded out into the dining area where Sadka was sitting with Alta Villa Manager Deborah Bell and Ortiz, Miller's supervisor at the time. Sadka invited Miller to sit down and asked if she had seen the colored flyer that he displayed to her. The graphic on it depicted a kitchen employee. It was an item of literature that the Culinary Union, a labor organization prominent in the gaming industry of Las Vegas, was passing out.

Sadka claimed the flyer said the Culinary Union could come in as the employees union without having an election. Miller expressed doubt about this, and Ortiz then remarked that Culinary was a good union with lots of money. He continued by saying it could hire thugs to beat up an employee just walking to their car after work. Ortiz also stated Culinary was a better union than the Steelworkers, had good insurance, and that he was a withdrawn member of Culinary with family insurance still in effect. Sadka then spoke up that the Steelworkers had a bad name and could not get licensed by gaming authorities of Nevada. Sadka's last remark as he left was that ''this could really get ugly, get nasty, this whole thing.''

Respondent called no witnesses to this episode, nor claimed their unavailability. By the uncontradicted and credibly presented testimony of Miller several factors are evident. The first is that a klatch of supervisors summoned Miller into their presence without particular regard to how their imminent comments might reasonably affect her. Secondly, they acted as surrogate distributors for the Culinary Union of a flyer Miller had not seen, and might not necesessarily otherwise learn about. Third, each of the supervisors showed an employer preference for Culinary; Ortiz by extolling it, Sadka by criticizing the Steelworkers in comparison, and Bell by her silent assent during the episode. Finally,

the remark of Ortiz that mentioned thugs and beatings was an ominous and totally unwarranted intimation that Miller could expect physical harm from her known support for the Steelworkers and inclination not to abandon its support.

In *Multimatics Products*, 288 NLRB 1279 (1988), the Board found a violation of Section 8(a)(1) where the employer had urged employees to allow it to sponsor a union of its own choosing. I consider this clear authority to find these allegations (other than the reference to ''property damage'') are valid, based on the uncontradicted testimony of what Respondent's supervisors said to Miller. I hold that the General Counsel has achieved substantial evidence to support complaint paragraphs 10(l), (m), and (n).

Paragraph 10(o)

The issue here is whether Respondent, by Richard Ross, unlawfully prohibited its employees from talking to other employees about the Union.

Miller testified to an incident within the time period of Section 10(b) of the Act, during which she was working at the Alta Villa pantry line. While there Michael Deschene, an employee working the adjoining Beef Baron pantry line, asked her a question about the Union which resulted in conversation between them as they worked.

Richard Ross, the Beef Baron's supervisory sous chef, approached and told Miller she could not ''be talking union'' while there at work on Hilton property. Miller answered back that Deschene had asked her a question about the Union, to which Ross elaborated that she was there to teach this new employee his job and not to be talking.

Respondent did not call Ross as a witness, nor claim that he was unavailable. I view the issue here in terms of *Greensboro News Co.*, 272 NLRB 135, 138 (1984). There a 2-minute conversation occurred between employees about a union, but not that one was directly soliciting the other. A supervisor of that employer later warned one of them about this talking while at least one was still on the job. The supervisor did not attempt to learn who initiated the conversation, but warned the one who had concluded work for the day. The Board found this warning ''unlawfully equated talking about unions with soliciting for one.'' This was held to be coercive within the meaning of Section 8(a)(1) because it forced the revealing of whether one employee had engaged in discussion of a union with a fellow employee.

The analogy is sufficient to find a violation here. Ross did not know who, as between Miller and Deschene, had initiated any discussion on the subject. His prohibition to Miller, while not appearing to constitute a formal warning, must be fixed one way or another along the line of what is permissible by an employer's agent. I am satisfied that Ross believed Miller to have been soliciting, an erroneous belief for which the Board provided a notice remedy in *Greensboro News*. I hold that the General Counsel has achieved substantial evidence to support complaint paragraph 10(o).

Paragraph 10(p)

The issue here is whether Respondent, by Jeff Astemborski, unlawfully interrogated its employees coercively about their union sympathies.

Galaviz testified that during June he was wearing a button supportive of the Union. He experienced several instances in the main kitchen or employee dining room (EDR) when Supervisory Sous Chef Jeff Astemborski gestured toward the button and shook his head disapprovingly from side to side. Jeff Astemborski soon started to also question Galaviz about whether he was for the Union, and the employee finally answered that he was. At the moment of one of Jeff Astemborski's inquiries the supervisor also approached to cross out the button by marking over it in black. Galaviz ducked away from having this occur, but testified that Jeff Astemborski made the marking on buttons worn by other employees.

Respondent did not call Jeff Astemborski, nor claim his unavailability although the record shows he left the employ of Respondent in July. There is no extenuating basis for Jeff Astemborski to have intrusively asked about Galaviz' support for the Union. This agent of the employer compounded his unlawful inquisitiveness by the overbearing attempt to deface the button. This is a narrow factual issue on which I hold that the General Counsel has achieved substantial evidence to support complaint paragraph 10(p).

Paragraph 10(q)

The issue here is whether Respondent, by Luis Herrera and Gary Astemborski, unlawfully indicated to its employees that it supported a labor organization other than the Union.

Galaviz testified that during June he was in the EDR, where Herrera and Supervisory Sous Chef Gary Astemborski approached him. The Culinary Union had passed through the property's EDR that day passing out its flyers. Herrera referred to Culinary as ''our'' union, which was better for casinos in which it had experience. Gary Astemborski echoed Herrera's opinion about Culinary, and Galaviz was asked if he wanted a folder or flyer about that labor organization. The episode ended with Galaviz being told that the Culinary Union's material was in another place and available to him.

Respondent did not call any witnesses on this issue, nor claim their unavailability although the record shows that Gary Astemborski left the employ of Respondent sometime after this episode. This is a less extreme, but sufficiently impermissible, instance along the lines of what Miller experienced as treated in consolidated complaint paragraphs above.

The direct and unsolicited indications from Herrera and Gary Astemborski left Galaviz reasonably concerned about his status as a known union supporter and unmoved by the views of these employer agents. It is a concern that employees are entitled to be free of in their pursuit of self-organizational rights. I hold that the General Counsel has achieved substantial evidence to support complaint paragraph 10(q).

Paragraph 10(r)

The issue here is whether Respondent, by West, unlawfully threatened its employees with the loss of benefits and the reduction of wages if they selected the Union as their bargaining representative.

Diaz Orozco testified to experiencing several meetings with West during June. One was when only the two of them were present together in West's office, another one was with Gallardo also present to interpret, and others were when a group of employees were present. He testified that at one of the group meetings West told them ''the same thing'' the consultants had been telling, which was that employees

would lose all the benefits and even their jobs if the Union won.

Moreno testified that during the campaign he was present at several group meetings between West and kitchen employees at which Gallardo was the probable interpreter. Moreno recalled West being critical of the Union, and saying that if it came in the Respondent would start paying only $4.25 per hour. He also predicted that health insurance cost to employees would increase if they brought in a union. Moreno attributed West with repeating these statements at all the meetings.

Respondent did not call West as a witness, nor claim his unavailability. I do not rely on Diaz Orozco's testimony to the extent that he characterizes West's remarks to be the same as the consultants with regard to possible losses to employees for selecting the Union. I do credit Moreno, however, insofar as he related that West's own remarks were about a lowering of wages to $4.25 hourly and an increase in insurance costs. Such uncontradicted testimony shows a direct threat that West communicated to employees about consequences of their unionizing. I hold that the General Counsel has achieved substantial evidence to support complaint paragraph 10(r).

Paragraphs 10(s) and (t)

The allegations of these two complaint paragraphs are essentially identical, so I merge them for purposes of discussion. The issue is whether Respondent, by West, unlawfully threatened its employees that strikes were inevitable and that employees will or would lose their jobs if they selected the Union as their bargaining representative.

Moreno testified that during West's meetings as they were conducted during the campaign in May and June, this official said the Union wasn't good and if it came in there would be a strike. I cannot give full weight to Moreno's testimony, for it is diluted by at one point distinguishing a statement of West that ''if the workers went out on strike'' there could be replacement workers hired. This undercuts a contention that strike action was inevitable, for if that was West's manner of characterizing the prospect he would also not have spoken of it as only conditionally possible. I cannot favor one of Moreno's versions over the other, and therefore conclude that West's message was merely to say, as Respondent did so often in other regards, that employees should remember they might be drawn to a strike and it had consequences. These allegations turn on just this narrow divergence in the uncontradicted testimony. I hold that the General Counsel has not achieved substantial evidence to support complaint paragraphs 10(s) and (t).

Paragraph 10(u)

The issue here is whether Respondent, by West, unlawfully made an implied promise to its employees to improve employees' benefits if they rejected the Union as their bargaining representative.

The only testimony in support of this allegation is that of Moreno in telling of West's remarks during his meeting with employees presumably occurring in May. The General Counsel relies only on the following passage:

> He [West] talked about the union, that it wasn't good, and that if the union came in that there would be a strike. He said that if the union came in that they would pay more in the casino but it wasn't the union that paid the wages and it wasn't the union that gave increases or took away increases.

I do not discredit this brief testimony, but do not find in it an implied promise by West to improve employees' benefits if they rejected the Union. It is instead, at best, merely descriptive of an awkward explanation that the employer paid wages and not a labor organization when representing employees. I hold that the General Counsel has not acheived substantial evidence to support complaint paragraph 10(u).

Paragraph 10(v)

The issue here is whether Respondent, by West, unlawfully threatened its employees that the pay raise announced by the Respondent on June 4 would be lost if the employees selected the Union as their bargaining representative.

Viera testified that he learned of his 50-cent-per-hour pay increase from the general raise of spring 1993 when West called him into the office for discussion with an interpreter present. West explained the raise being based on doing a good job plus a review of Laughlin salaries for the industry. Viera asked if the raise was permanent, and West told him probably so. When Viera asked why the uncertainty was present, West told him it was because if the Union won he probably ''will lose'' (as corrected) the raise.

I credit Viera with respect to what meaning was translated to him from West's remarks about the pay raise. This results in uncontradicted testimony of a direct threat that the significant pay raise being implemented could be lost barely a month later if the Union won the election. This is a threat of an obvious and important nature, and I see no reason to analyze the issue in terms of did West knew authoritatively that his threat represented Respondent's true intentions or not. It is enough that he verbalized it to an employee having no reason to discount its risk or avoid some fear that it could eventuate. This is a heavy suppression of employees' rights to engage in protected activities. I hold that the General Counsel has achieved substantial evidence to support complaint paragraph 10(v).

Paragraph 10(w)

The issue here is whether Respondent, by West, unlawfully threatened its employees with the loss of benefits and the reduction of wages if they selected the Union as their bargaining representative.

Viera testified that in the course of one of the several meetings to which he was called by West with only an interpreter also present, the supervisor discussed miscellaneous benefits enjoyed by the employees. He recalled West saying the employees would lose their free uniforms and would have to pay for food and parking in terms of the Union. As to wages he attributed West saying that if the Union won the start of negotiations would be ''by the 4.25.''

I am satisfied that Viera has misunderstood any reference to the $4.25 legal minimum wage, and the benefits that were itemized in the ''hidden paycheck'' handout. I discredited him above as to any absolute statement of $4.25 becoming the rank-and-file wage if the Union prevailed, and the items of uniform cleaning and paid lunches were expressly listed in the ''hidden paycheck'' handout plus that an unvalued parking privilege was also referenced. I cannot give the loose

and unreliable testimony of Viera a conclusive weight in the resolution of this issue. I hold that the General Counsel has not achieved substantial evidence to support complaint paragraph 10(w).

Paragraph 10(x)

The issue here is whether Respondent, by Ellen Martin, unlawfully solicited employee complaints and grievances and, directly or by implication, promised to adjust them if employees rejected the Union as their bargaining representative.

Patricia Black is a guest room attendant in the housekeeping department, and was continuing in employment with Respondent at the time of her testimony. Black recalled attending a meeting in early June of up to a dozen employees in the office of Executive Housekeeper Ellen Martin. She testified that Martin first commented on the general pay raise just announced, and then unpromptedly said that if employees had any problems she should be informed so as to do something about it. From this opening various employees told her of a basic complaint that doing 17 rooms a day was too difficult an assignment. Black testified that Martin said her ''policy'' would be to become responsive, and employees would hear from her about the room quota. Martin had never before asked employees to voice their job problems.

Respondent did not call Martin as a witness, nor claim that she was unavailable. I credit Black as a witness who persuasively gave her testimony in seemingly reliable and consistent detail. This establishes the criteria of an employer agent drawing out the perceived problems of employees and giving them reason to expect adjustments, all in a clear context of a union's campaign. That final element of the subject was established from Black's testimony that Martin had pointedly told employees the pay raise had ''no affiliation'' with the Steelworkers and was only the result of a survey. Thus the implication of adjusting complained-of problems was also connected to the employees giving disregard to the Union. I hold that the General Counsel has achieved substantial evidence to support complaint paragraph 10(x).

Paragraph 10(y)

The issue here is whether Respondent, by Diane Ashley, unlawfully threatened its employees with loss of employment opportunities because their photograph or name appeared in a union pamphlet.

Black testified that she had conversed alone with Housekeeping Supervisor Diane Ashley during late June, when Ashley confronted her with the ''real superstars'' document in which Black was pictured. Ashley said that employees who were shown in it would have a hard time finding a job in other Laughlin casinos because of being so pictured. Ashley told Black that already the pamphlet had circulated among all the other river casinos. Ashley requested copies of this document, and Black provided her with two of them several days later. Then, on about July 4 when the Union distributed the ''Declaration of Independence'' document, Ashley also asked for copies of this which Black provided as a scrolled original.

Respondent did not call Ashley as a witness, nor claim that she was unavailable. I was again impressed by Black that she was a credible witness concerning this issue. Her uncontradicted testimony is that Ashley made an alarming remark about the occupational consequences of Respondent's employees having consented to be publicized as supporters of the Union. Ashley provided no basis for her statement, which could only be taken as a matter of serious jeopardy to a person's full working career in the well-confined labor market area of this case. I hold that the General Counsel has achieved substantial evidence to support complaint paragraph 10(y).

Paragraphs 10(z) and 10(aa)

The allegations of these two complaint paragraphs are essentially identical, so I merge them for purposes of discussion. The resultant issue here is whether Respondent, by Sadie McKinney, unlawfully solicited employee complaints and grievances and promised, directly or by implication, to adjust or otherwise resolve them if employees rejected the Union as their bargaining representative.

Cardenas testified that Housekeeping Supervisor Sadie McKinney held several meetings for department employees within the three week period prior to the election. A Spanish-speaking supervisor was provided to translate McKinney's remarks. Cardenas recalled that at the first meeting McKinney asked if the employees were happy with the cleaning chemicals. When several employees responded that the chemicals were weak and slow acting, McKinney said she was unaware of this and would try to fix the problem. McKinney also offered to continue group meetings of the kind done that day, but the sentiment of employees was that this would undesirably draw time away from their required work.

At the second meeting McKinney asked employees if they had problems with their supervisors or their jobs. When some employees said they had problems with supervisors, McKinney said Respondent would open up an office where employees could go any time they had problems. At a point during this second meeting Cardenas spoke up about her health insurance problem. It resulted after she necessarily went to Mexico for treatment of a medical condition, and then found that the cost of this was denied to her in reimbursement.

McKinney asked Cardenas to bring her this individual problem after the meeting, and when the two of them later conversed with the assistance of an interpreter McKinney asked that Cardenas bring her all available receipts bearing on the treatment. Cardenas did so within 2 days and McKinney ''put herself in charge of helping me.'' The result was an eventual reimbursement to Cardenas of the disputed medical costs.

Respondent did not call McKinney as a witness, nor claim that she was unavailable. I credit Cardenas on this issue, because her testimony about the largely personal experience with McKinney was considerably more convincing than subjects she covered on other issues of the case. This evidence shows that McKinney initiated gatherings of employees that were unpredecented, except for a time immediately after Respondent opened. McKinney probed for the employees to voice their problems, and stated a clear intention to resolve them if possible. McKinney gave extraordinary attention to Cardenas' health insurance coverage problem, and brought about a substantial reimbursement to the employee. McKinney's conduct was expressly associated to Respondent's

newly devised complaint resolution procedure, an innovation which itself impermissibly established a mechanism for presenting and adjusting employee complaints. I hold that the General Counsel has achieved substantial evidence to support complaint paragraphs 10(z) and 10(aa).

Paragraphs 10(bb) and (cc)

The allegations of these two complaint paragraphs are closely related, so I merge them for purposes of discussion. The resultant issue here is whether Respondent, by McKinney and Kent Vaughn, unlawfully threatened its employees that if the Union were to come in as a result of the employees selecting it as their bargaining representative, the Respondent would cut employees' wages and benefits.

Vasquez testified that she attended an employee meeting shortly before the election in McKinney's office. Assistant Director of Housekeeping Kent Vaughn was also at the office to participate in the meeting. There were about 16 Spanish-speaking employees present, and McKinney asked bilingual Vasquez to interpret for these employees.

McKinney began the meeting by talking about the Union, and the important vote the employees would soon make on the subject. Vaughn then followed with remarks including that employees would lose their benefits if they voted for the Union. Vasquez testified that Vaughn also said employees' pay would go down to $4.25 hourly if the Union went in. When McKinney then spoke further she also said wages would go down to $4.25 hourly if employees voted in the Union, and they would lose benefits. The prediction of wage rates being so severly cut provoked a debate between McKinney and Ordaz Espinoza about the consequences of this happening.

Respondent did not call Vaughn as a witness, nor claim that he was unavailable. I have frequently discredited Vasquez because her testimony seems chronically overstated and unreliable. I believe she has again failed to comprehend the actual remarks of employer agents. She has exhalted reference to the $4.25 rate and existing fringe benefits to a mistaken claim that loss to employees was an inevitable consequence of their unionizing, according to what these supervisors said at this meeting. The partisan, but largely permissible, statements about the subject of pay and benefits were contained in the videos, the mandatory meeting handouts, and other campaign material put forth by Respondent.

However faulty her testimony might seem to me, it was Respondent's choice to designate Vasquez as the interpreter for a substantial assembly of employees. As such she became Respondent's agent for this limited purpose, and in the process disseminated threats to the Hispanic employees taking meaning from her as to what two prominent supervisors were presenting. On this special basis, and absent any neutralizing evidence from Respondent, the allegations must be found to have merit. See *Ella Industries*, 295 NLRB 976 fn. 2 (1989). I hold that the General Counsel has achieved substantial evidence to support complaint paragraphs 10(bb) and (cc).

Paragraph 10(dd)

The issue here is whether Respondent, by Todd Lindsey, unlawfully threatened its employees that they would have difficulty resolving work problems with their supervisors if the Union was selected to represent them.

Cardenas testified that around late June she was called into the office of Housekeeping Supervisor Todd Lindsey where he discussed a guest complaint with her. A clerical employee of the housekeeping department was present to interpret for Cardenas. The complaint had to do with the level of room cleaning performed, but Cardenas denied any failure of proper job fulfillment. Lindsey told her that if the Union were to come in a complaint of this nature would have to go to a ''bigger office,'' but as matters stood it need go no further then.

Respondent did not call Lindsey as a witness, nor claim that he was unavailable. I again find that Cardenas testified persuasively on this particular issue, involving as it did a supervisory concern about her own job competence. There was no basis for Lindsey to differentiate handling of a guest complaint differently under union representation of the employees or without it. His statement as made gave reasonable cause to fear that some adverse consequence would attach to this element of employment simply because a union was chosen for other legitimate purposes when sought by a majority of the employees. The allegation here is that Lindsey uttered a threat, and that is what Cardenas' description established it to be. I hold that the General Counsel has achieved substantial evidence to support complaint paragraph 10(dd).

Paragraph 10(ee)

The issue here is whether Respondent, by Katie Scarbrough, unlawfully threatened its employees that their wages would be cut if they selected the Union to represent them.

Vasquez testified that about 3 weeks before the election she was spoken to by her Housekeeping Floor Supervisor Katie Scarbrough. Vasquez recalled Scarbrough saying she had just come from the daily supervisors meeting, where she had been told that even with a union the employees would still have the objected-to 17 rooms a day to clean, would have their pay cut to $4.25 per hour, and might lose benefits. Scarbrough added her own cautionary words that employees should be really careful of what they were doing in this regard.

Respondent did not call Scarbrough as a witness, nor claim that she was unavailable. I find Vasquez' testimony reliable on this issue, largely because it is simply a matter of her repeating Scarbrough's disclosure as opposed to drawing the meaning from more complex comment about the merits and risks of having a union for collective-bargaining purposes. It is not a question of what was said among supervisors at their meeting that matters, but instead what Scarbrough chose to express to Vasquez as an unsolicited remark that could only have the effect of heightening concern in the listener. As such, it shows that the allegation made here has merit. I hold that the General Counsel has achieved substantial evidence to support complaint paragraph 10(ee).

Paragraphs 10(ff), (gg), (hh), and (ii)

The allegations of these four complaint paragraphs involve the same episode, so I merge them for purposes of discussion. The resultant issues here are whether Respondent, by Howard Silver and James Bocanegra, unlawfully (1) interrogated its employees coercively about their Union activities, (2) threatened its employees that they would not be hired by

other employers because of their union activities, (3) promised its employees improved benefits and working conditions if they rejected the Union as their bargaining representative, and (4) indicated to its employees that it favored a labor organization other than the Union.

Galaviz testified that in late June Silver was calling employees of his department into his office singly for discussion. Galaviz went in for his turn, at which Bocanegra served as an interpreter. The estimated length of this meeting was 45 minutes. Silver began by displaying the ''real superstars'' document, and asking Galaviz if he thought he could get work in other casinos with his photo having appeared in the document. Silver said that human resources departments of other casinos had copies of the material, and they would not call him to employment because of this show of support for the Union.

Silver asked Galaviz if his photo in the document meant he wanted more money. Galaviz answered this saying it was different treatment and better working conditions that he wanted. Galaviz gave as examples having a guarantee of work breaks and not to be yelled at. Silver then said, ''we're working on that,'' and to give him an opportunity to ''fix all the problems'' in a year. Silver said if problems were not satisfactorily fixed the employees could get another union such as the Culinary.

Galaviz testified that Silver asked how he felt about the Union early in the meeting. As time progressed Silver began asking more direct questions, and finally asked outright if Galaviz would ''vote no'' concerning the Union. Silver pressed this question three times, and hoping to end the meeting Galaviz concealed his true intention by saying that he would ''vote no.''

Galaviz also testified that Silver said if the Union got in and achieved a dollar increase for employees, they would still lose more overall because of having to pay for parking, food and uniforms as not then required. Galaviz asked Bocanegra if he was understanding Silver correctly, and Bocanegra confirmed that such features of employment had to be paid for by employees at another Hilton property where he previously worked.

Silver denied making statements attributed to him by Galaviz. Bocanegra did not recall the specific meeting with Galaviz, but did testify that his department conducted ''one-on-one'' meetings with about 40 of its employees. Bocanegra admitted telling employees that benefits would be reduced if the Union came in, and that they were currently enjoying benefits not found at other Hilton properties.

While I discredited Galaviz in regard to complaint paragraph 9(c), above, that was largely based on demeanor considerations of his testimony about the sweeping subjects covered in consultants' presentations at mandatory meetings. Here Galaviz testified to a well-focused experience about which he was personally enmeshed, and displayed impressively improved demeanor by assured mannerisms during which he recalled the Silver-Bocanegra meeting while alone with them.

Silver's testimony on these issues was highly discreditable on demeanor grounds, coupled with his plain inconsistency and evasiveness. Bocanegra was less obviously to be discredited, but my impression from his demeanor was sufficient to reject his testimony where in conflict with Galaviz. The result is a basis to say from Galaviz' credible testimony that Silver committed each of the impermissible activities raised by these allegations in the course of his intrusive and fear-inducing remarks to Galaviz. I hold that the General Counsel has achieved substantial evidence to support complaint paragraphs 10(ff), (gg), (hh), and (ii).

Paragraphs 10(jj), (kk), and (ll)

The allegations of these three complaint paragraphs involve the same episode, so I merge them for purposes of discussion. The resultant issues here are whether Respondent, by Bocanegra, unlawfully (1) promised its employees improved working conditions and other unspecified benefits if they did not select the Union to represent them, (2) interrogated its employees coercively about their Union sympathies, and (3) solicited employee complaints and grievances and promised, directly or by implication, to remedy the complaints and grievances.

Miller testified that in late June she was called into Bocanegra's office where only the two of them were present. As customarily at the time she was wearing a pocket insignia supportive of the Union. Bocanegra asked whether she had any problems in the kitchen, and Miller described her discomfort over how other employees were treated. Bocanegra said that he and the newly arrived Silver were easier to talk with, and more responsive to employee problems than predecessor in charge Jeff Eaton. Bocanegra asked her to accord time to improve whatever was bothering the employees, saying that things will get better. As the meeting ended Bocanegra expressed his sense that he did not seem to have changed Miller's voting intentions. Bocanegra does not recall having a meeting with Miller of the nature described.

In the only prior instance of Miller's testimony being contradicted (complaint pars. 7(a) and (b), above), I credited her on demeanor grounds over that of Bocanegra and Silver, too. I have a comparable assessment here, and was fully persuaded that Miller accurately recalled the remarks made to her by Bocanegra as the meeting to which she was called took place. Compared to Silver's approach Bocanegra spoke during this meeting in more subtle terms as to his inquiries and assurances, and did not directly mention the Union. However it is clear that by late June any special communication to employees of this department was strictly motivated to drain support away from the Union, as Bocanegra, and the more unruly Silver, engaged intensely in campaigning activities.

The allegations here show merit based on Miller's credited testimony, but with one exception. The exception is that I do not consider Bocanegra's vague, conversational-type remark of things getting better can be taken as *promising* ''improved working conditions and other unspecified benefits.'' I hold that the General Counsel has achieved substantial evidence to support complaint paragraphs 10(kk) and (ll), but not so in regard to paragraph 10(jj).

Paragraphs 10(mm) and (nn)

The allegations of these two complaint paragraphs are closely related, so I merge them for purposes of discussion. The resultant issues here are whether Respondent, by David Downie, unlawfully (1) informed its employees that they would not be allowed to work until they began wearing pro-Respondent buttons or replaced their Union buttons with pro-

Respondent buttons, and (2) informed its employees that their vacation requests would be granted only if they removed their Union buttons and replaced them with pro-Respondent buttons.

Leonardo Quintana was a bus person on extended injury leave from active employment with Respondent at the time of his testimony. During the period of the Union's campaign he had regularly worn a prounion button while at work. Quintana testified that Executive Steward David Downie held morning meetings with employees each day to give them a station assignment. Downie once brought proemployer buttons into a morning meeting and distributed them to each employee. He told them in connection with doing this that they should take off any union buttons they were wearing, or not be permitted to work in the restaurant. Some of the employees complied and some, Quintana among them, did not.

At around this same time Quintana submitted a written request to Downie for 2 additional days off in the near future. About a week passed and the time for Quintana's requested 2 days off was approaching. He spoke to Downie in that supervisor's office about an approval, and Downie said it was being withheld because he continued to wear the union button. Quintana replaced his union button with the proemployer one previously provided him. This immediately satisfied Downie, who promised to approve the request which he did. Quintana returned to work, but reversed the buttons again to show he remained a supporter of the Union.

A few days later Downie noticed this, and indicated a dislike that Quintana had changed back. This did not, however, affect the time off approval, which led to a 4-day period during which Quintana traveled out of state.

Respondent did not call Downie as a witness, nor claim that he was unavailable. I credit Quintana's well-detailed and consistent presentation of the running circumstances in which he sought additional time off work. His testimony establishes that Downie verbalized a prohibition against the wearing of Union buttons, and conditioned his approval of Quintana's requested ''vacation'' time on his exchange of buttons.

Downie does not appear to have enforced his stated intentions with vigor or consistency, but that does not detract from the coercive effect of his words and behavior. I hold that the General Counsel has achieved substantial evidence to support complaint paragraphs 10(mm) and (nn).

Paragraphs 10(oo) and (pp)

The allegations of these two complaint paragraphs arise out of the same document, so I merge them for purposes of discussion. The resultant issues here are whether Respondent, by Kosinski, in a memorandum dated on or about July 3 and distributed to employees at the facility on or about that date, unlawfully (1) made implied threats to blacklist its employees because of their support for the Union, and (2) threatened its employees with loss of future job opportunities by other employers who would be less likely to hire them because of their union activities or support for the Union.

Kosinski drafted a memorandum dated July 3 bearing the subject ''VOTE NO,'' and caused its posting plus distribution to ''All Flamingo Hilton Laughlin Employees.'' This memorandum read:

> Many employees have asked, will we be able to go to work for other Laughlin hotels if the United Steel Workers win the election?
>
> We can't speak for other companies so we can't say whether or not the other hotel-casinos in Laughlin (all of which are non-union) would hire you if the United Steel Workers win the election.
>
> We do know that the other hotel-casinos now in Laughlin do not have a union contract and are sure that the other hotel-casinos want to operate on a non-union basis, and if you become a union member, the union could fine you for working at a non-union company. We would never ''blackball'' anyone but we can't speak for the other hotel-casinos in Laughlin.
>
> Before you vote ''Yes,'' you might want to check with other hotel-casinos here about your job opportunities if you come from a ''union hotel.''
>
> We hope that you will want to continue working at the Flamingo Hilton Laughlin, but why risk your future job opportunities by voting in a union?
>
> VOTE NO.

Prior to issuance of this memorandum Kosinski had *not* (1) inquired of any other Laughlin-area casino hotel contacts about ''job opportunities'' for persons previously employed at an organized casino hotel, (2) heard from any Laughlin-area casino hotel ''the notion of a blackball'' of union supporters, nor (3) had information from any Laughlin-area casino hotel there would be ''any reluctance to hire'' someone previously employed at an organized property. None of the other riverfront (or closely situated Ramada Express) properties in Laughlin have a major casino or hotel complement of employees that is organized.

It is apparent from this background that Kosinski composed the ''VOTE NO'' memorandum strictly as Respondent's message about a particular consequence of a union victory. That consequence would be a possible branding or disadvantage, which individuals working at Respondent could suffer as a personal sort of stigma in terms of their employability throughout the chief industry of this discrete labor market area. This would undoubtedly stir serious consternation in any person whose life was rooted in the community, and whose job experience and occupational preference left them dependent on continuing employment in local area gaming.

The memorandum consists of five paragraphs, each of which provides a significant element to an overall conclusion as to this issue. The first paragraph ascribed the underlying premise of blackballing to a concern expressed by ''[M]any employees,'' however Respondent did not call a single rank-and-file employee to testify this was happening. The only suggestion of it is found in the testimony of Silver, which in any instance I fully discredit, that Galaviz had raised a concern over being blackballed by the ''real superstars'' document. More prominently, Flores had never heard such a concern over the entire course of his meetings with employees.

The memorandum's second paragraph sets up the dual premises of other Laughlin properties being ''non-union,'' and associates any hiring that might be done at such properties in the future to a Steelworkers election victory. This

association is the most insidious portion of the entire document.

The third paragraph refers passingly to the prospect of fines by the Union for a person working at such a nonunion property, but then gratuitously introduces the notion of persons being ''blackball[ed].'' There was simply no reason to connect a union's power to fine members to the dread prospect of industrywide blackballing, except to maximize a cleverly induced fear in readers.

The fourth paragraph proposes the peculiar thought that any Union-leaning employee of the bargaining unit about to vote solicit some inkling about job opportunities at other nearby properties should Respondent become unionized. Finally the fifth paragraph leaves readers with the thought of there being a sort of overall career jeopardy to voting in the Union

The cumulative effect of this memorandum was to create apprehension among these employees about their own job futures, where no basis for such fear had existed before. The repeated disclaimer of Respondent ''speak[ing]'' for any other Laughlin property is no more than a gagging attempt to sanitize a message that is beyond lawful salvage. If all this were not enough, the memorandum nudges employees toward a strange and awkward prospect of having another casino hotel endorse their proposed vote for the Union, and if this should not be done have them worry long thereafter that they are occupationally wounded.

The timing of this memorandum was obviously chosen for greatest effect. As Kosinski would well know, Sherlock was about to appear the next day for his comprehensive series of 24/25-hour meetings with all the employees of the bargaining unit. Such meetings touched not only extreme criticism of the Union and unionism, but fostered instead the pleasant picture of a work force continuing without change to collective representation.

This contrast would tie in neatly for Respondent's purposes with the doleful opposite prospect of having a union, but in doing that to cloak oneself in occupational blackballing throughout a dominant community segment. Finally, the memorandum was posted or distributed in the range of only a scant 60–80 hours before the voting period began at 5 a.m. on the following Tuesday, July 6, leaving no fair opportunity for rebuttal.

In *Hall Construction*, 297 NLRB 816, 818 (1990), the Board adopted a finding of an unlawful threat of blacklisting where employees were told that unionizing would mean ''all of us guys would be blackballed from any work in the Black Hills (South Dakota) . . . we wouldn't be able to find any more construction work at any of the mines . . . .''

Here Kosinski's memorandum avoided the direct threat of blackballing, but implanted the prospect in such a sinister and seemingly inevitable way that it created an indefensible threat of the consequence. See *Sahara Datsun*, 278 NLRB 1044, 1050 (1986); *Hertzka & Knowles*, 206 NLRB 191, 194–195 (1973), enfd. 503 F.2d 625 (9th Cir. 1974).

Respondent cites *Daniel Construction Co.*, 264 NLRB 569 (1982), on this issue, arguing that statements in the memorandum were ''protected opinion.'' *Daniel Construction* was decided by a divided Board, in which broad principles of an employer's entitlement to express views were discussed and applied.

That portion of the decision turned on the employer's statement of possibly being in a ''noncompetitive'' position, which the Board majority declined to equate with unionization. Instead the Board viewed this employer's desire for a competitive position as commonly understandable in a business context, and one for which the economic underpinnings were clear.

This is faint authority for Respondent's contention here, one based on Kosinski's frightening association of unionization to possible blackballing. That misfortune for any employee would in any event have no direct connection to its own economic interests. I see no value at all to Respondent from the pertinent rationale of *Daniel Construction*.

I hold that the General Counsel has achieved substantial evidence to support a modified phrasing of complaint paragraph 10(oo) and of complaint paragraph 10(pp) as phrased. The modification applicable to paragraph 10(oo) is to term the unfair labor practice as a threat that other employers, not Respondent itself, would blacklist employees because of their support for the Union.

Paragraphs 10(qq), (rr), (ss), (tt), (uu), and (vv)

The allegations of these six complaint paragraphs associate to a same approximate point in time, and are so comparable in substantive phraseology that I merge them for purposes of overall discussion. The resultant issues here are whether Respondent, by West, unlawfully (1) interrogated its employees coercively about their union activities, (2) made implied threats of unspecified reprisals against its employees because of their support for the Union, (3) threatened to reduce wages of its employees if they selected the Union to represent them, (4) threatened to commit blacklist of its employees because of their support for the Union, and (5) threatened its employees with discharge because of their suppport for the Union.

Diaz Orozco testified that approximately several days before the election he was called into the office of West, where Gallardo was also present to interpret. West began the meeting by displaying the ''Declaration of Independence'' document, on which Diaz Orozco's name was highlighted. West thrust the document onto Diaz Orozco's chest, saying, ''You know what you did here is shit.'' Diaz Orozco simply said the paper reflected his support for the Union. West then opened a copy of the ''real superstars'' document to Diaz Orozco's picture, spoke sarcastically, and then said he would turn the material over to other casinos so they would not give him a job. Diaz Orozco testified to a conversational exchange that followed with West saying, ''Do you know that with this you could lose your job,'' and the employee again replying that he had supported and would support the Union. West then ordered him back to work. Diaz Orozco also testified that at another meeting with West occurring early in July, where fellow kitchen employees were also present, plus Gallardo, West had said employees would lose benefits if the Union won and would then get only $4.25 per hour

Jesus Martinez is a steward in the kitchen area, and was continuing in employment with Respondent at the time of his testimony. Martinez testified that approximately 3 days before the election West spoke to him in the supervisor's office with Gallardo present to interpret. West displayed the ''real superstars'' and ''Declaration of Independence'' documents, and asked what it meant for Martinez' photo and signature

to be among others. Martinez answered with a fear of losing his job, by saying what was not so that he had given union callers to his home a photo and signature under duress. Martinez' photo was above a statement in Spanish stating a hope for better wages, insurance, and job security. West asked him if that represented a current view, and Martinez affirmed that it did. West then said that if the Union were brought in wages would be lowered to $4.25 hourly, and ''other people'' would take the place of employees in their jobs.

Viera testified that about 1 or 2 days before the election he was also called into West's office. West displayed the ''Declaration of Independence'' document to him, asking if it showed his signature. Viera falsely and repeatedly denied it was his true signature, because of a fear he might lose his job.

I credit Diaz Orozco as to his recollection of questioning by West, and hearing that supervisor's statement that unionization would result in a loss of benefits and wage reduction to the legal minimum. Diaz Orozco is mistaken, however, in placing a meeting with West as occurring on what would have been July 5. As to such a placement in time he was inconsistent, terming it the ''last night before the election [of July 6],'' but also that it happened ''before . . . the last meeting with Sherlock when the movie was shown [on July 4].''

Counsel for the General Counsel had concluded his examination of Diaz Orozco without eliciting testimony from him of such a significant nature. Furthermore the witness' entire attempt to place the incident in time was generated from counsel for the Union's leading question of ''The—was there a meeting the night just before the election?,'' which I believe Diaz Orozco answered carelessly.

However in complaint paragraph 10(r), above, I found West to have made the direct prediction of insurance costs increasing and wage rates slumping to $4.25 because of unionization. I believe this is a correct evaluation of the evidence here, when West is attributed with statements by uncontradicted and credible evidence.

I did not credit Diaz Orozco in complaint paragraph 10(r), above, because he was insufficiently persuasive in trying to equate any statements of West to the consultants. Here he has quoted West directly and convincingly. West was shown from other testimony to be impulsive, caustic, and seemingly ill-schooled in how he should temperately qualify remarks to employees that had to do with the campaign. Under all the circumstances, and certainly too West's failure to testify, I am confidently satisfied that Diaz Orozco's memory is accurate on these issues.

I also credit Martinez on demeanor grounds. This employee, quite newly hired at the time of his encounters with West, was well-detailed and expressed worthy distinctions of fact in what he described. In a matter not discussed as yet, Viera had openly distributed flyers for the Union, and survived a run-in with Casillas about whether he could continue attending mandatory meetings.

This raises the question of why he should have been so apprehensive about admitting a signature on the ''Declaration of Independence'' document, when his prior sympathies could not have been overlooked. Viera answered this point by explaining that pressures from the employer increased in the final portion of the campaign, and I am inclined to accept this explanation, subjective as it is in part.

The entire circumstances of Viera's testimony on these issues thus appears sufficiently valid to credit concerning West's harsh questioning of him about showing support for the Union even as the campaign was about to conclude. Overall the evidence shows that during a period I fix as the calendar week of June 27–July 3, West engaged in various and repeated acts and conduct of a nature impermissible under the Act. I hold that the General Counsel has achieved substantial evidence to support complaint paragraphs 10(qq) through (vv), inclusive.

11. Paragraph 11 allegations (introductory)

Here it is alleged in introductory manner and pertinent to all allegations of the subparagraphs to paragraph 11 of the complaint, and which Respondent denies, that on the actual date of July 4, Respondent, by Sherlock, unlawfully engaged in particular acts and conduct during a series of employee meetings conducted at the facility in violation of Section 8(a)(1) of the Act.

After a description of the general manner in which Sherlock's series of employee meetings were handled, the five operative allegations that associate to this introduction shall follow in serial order. An intention to hold 24/25-hour meetings had become definite by April or May, with Sherlock and Lopez being the principal planners. Lopez coordinated production of the video to be used in such meetings, and prepared the initial draft of a speech outline for Sherlock. Production of the video was completed in June, while the speech outline was twice revised in discussions between Sherlock and Lopez, and then also checked by attorney Herman. The final speech outline was an 8-page document of 22 talking points, followed by intended final urgings of a ''no'' vote against the Union and blessings to employees.

The first seven talking points of the speech outline were preliminary campaign-type comment against the Union. The next six talking points were largely repetitive of what the mandatory meeting videos had repeatedly presented as Respondent's communication to employees about promises of the Union, the realities of collective bargaining, and the factors of cause and consequence with respect to strikes. Of this group I quote point #12 as a more uncommon statement from what is known to have been expressed up until then. It read:

> And as I understand it, the Steelworkers are saying that if the hotel does not agree to its proposals by Labor Day, it will call a strike. This could be suicidal for the union and anyone who went out on strike. We are not going to be forced to pay higher wages just because the union calls a strike.

The final nine talking points were winding down campaign comment calculated to draw employees and employer together in mutual self-interest on the question about to be voted on. It is useful to also quote talking point #16, for this touches on a subject of frequent appearance throughout case testimony. It read:

> I have asked you for a chance. A chance for management to work hand in hand with you and no third party to interfere. I have asked this because I know that our managers can accomplish a cooperative attitude among us without confrontation and union dues.

Sherlock testified that in addition to formal draft revisions, he made last-minute changes as marginal notations and underscorings that would guide his actual delivery of a talk. At several of the six meetings for English-speaking employees, Sherlock deviated still more with slight extemporaneous comment as he covered his points. However at the two meetings for Spanish-speaking employees, he testified to reading the draft in its exact form. Employee Armando Garcia, a busperson, had been chosen by the consultants to be interpreter for these two meetings, and Sherlock held coordinating sessions with him to smooth out the translation process as to ''delivery pattern [and] emphasis.'' The interpreter was also provided a Spanish text of the speech outline, which the parties stipulated was a sufficiently accurate translation of the English speech outline as to have the same meaning.

11a. Paragraph 11(a)

a. *Issue*

The issue here is whether Sherlock unlawfully made promises of benefits to the employees if they did not select the Union to represent them.

b. *Evidence*

Black testified that in the 24/25-hour meeting she attended, Sherlock asked employees to give him a year to prove himself. She understood this to include the statement that he had an ''open door'' policy, for which any time employees had problems they ''could bring it up to him.'' Morgan testified that Sherlock had asked employees to give him a year to make things better, adding that he was listening to their complaints.

Sherlock both denied recalling that he made any literal statements of asking employees for 12 months ''to change all the problems'' (or ''change everything''), or that he had an open door policy permitting the employees to bring problems directly to him. He testified instead to asking employees for ''a chance'' as follows:

> Basically I said that I was new to the property and I realize that the only management style they had seen was Gary Gregg's for better or for worse, and I would like to be evaluated and judged on my management style and I would like to see them have a chance to see that management style.

Sherlock agreed that in expressing his hope for ''a chance,'' he had referred to a 12-month time period. This was his lay understanding of the limitation on frequency of representation elections contained in Section 9(e) of the Act. Flores corroborated Sherlock in never saying that an employee could ''go straight to his office,'' testifying instead that he had expressed a ''chain of command'' policy following which his door would be open to a dissatisfied employee.

c. *Credibility*

I do not credit Black or Morgan as to their testimony on this issue. The evidence is not in conflict that a 1 year or 12-month period was mentioned by Sherlock; however, I was not persuaded that Black's manner of testifying showed she had a clear recollection of the ''open door'' notion. By the time of the 24/25-hour meetings this subject had just been treated in Kosinski's June 26 memorandum. I believe this source, and not any remarks of Sherlock, influenced Black's testimony and made it unreliable. I also discredit Morgan, who I believe had mistakenly recalled his talking point #16. A probable reason for her confusion is found in point #18 where Sherlock's draft merely has the passage, ''I am here to tell you that I am listening!'' On this particular issue, and as to the particular 24/25-hour meeting or meetings attended by Black and Morgan, I credit Sherlock's testimony and that of Flores which supports him.

d. *Holding*

I believe an adequate and most reliable item of evidence bearing on this issue is Sherlock's own script of remarks to be given on July 4. This included the phrasing of his hope to be given a chance, and his confidence that a cooperative attitude between managers and employees could be accomplished ''without confrontation and union dues.''

In *Reno Hilton*, 319 NLRB 1154, 1155–1156 (1995), the Board found the president of that property had made unlawful statements during a series of speeches 2 days before an election. In such statements employees were reminded of the prior conferral of benefits, and that chief official asked for the chance to show a comittment to employees as to which he would ''deliver.'' The Board concluded that in context of earlier references to benefits already bestowed, and the larger context of other unfair labor practices, reasonable employees would interpret this too as an implied promise to either grant additional benefits, remedy grievances, or do both.

Here the Kosinski memorandum of June 22 with its list of 18 loaded questions was tantamount to a recent (in terms of Sherlock's speeches on July 4) reference to benefits conferred. This is particularly true as to question #18 which was a thinly veiled intimation about wage and health insurance benefit increases in particular, and as to question #2 which was a less direct reminder of the exceptional steps already accomplished for the benefit of employees. In this context, as in *Reno Hilton*, the factual similarities are again so comparable as to make Sherlock's plea for a chance to do more an implied and impermissible promise of benefits as alleged.

Therefore a showing of credible proof validating this allegation has been made. I hold that the General Counsel has achieved substantial evidence to support complaint paragraph 11(a).

12. Paragraph 11(b)

a. *Issue*

The issue here is whether Sherlock unlawfully informed employees that it would be futile for them to support the Union.

b. *Evidence*

LaFollette attended one of the meetings on July 4, recalling that it involved about 100 employees from throughout the property. She testified that Sherlock said wages would go back down to minimum wage if the Union came in, that Respondent did not have to negotiate with the Union at any time, and that chances were the employees would be out on strike by Labor Day.

Galaviz attended a July 4 meeting with numerous employees from departments of the property, and at which a movie was shown along with Sherlock speaking afterwards. Galaviz testified that Sherlock had said the Company was not obliged to negotiate with the Union, but that in another sense he could prolong any negotiations for years. Galaviz, although himself *testifying* in Spanish via an interpreter, is actually bilingual in English and Spanish to the extent permitting his ready communication with coworkers. In limited agreement with this testimony, Sherlock did recall telling employees negotiations could last from a month to a year.

Diaz Orozco was present at a meeting on July 4 with employees from various departments and busperson ''Armando'' interpreting the statements of Sherlock. He testified that Sherlock had made a demonstration of pulling his wallet while saying he would empty out his pockets to negotiate for a penny. Diaz Orozco also testified that Sherlock had said, as the consultants had done, that employees would lose their benefits if the Union won, and a strike would occur during the process of any contract negotiations with the result that employees would lose their jobs. Respondent did not call interpreter Garcia to testify about what he actually said in Spanish, nor did counsel for Respondent claim that he was unavailable. Finally, no Spanish-speaking employee also in attendance at either of the two meetings when translation was given was called to testify contrarily that a prolongation of negotiations for years was not something heard by those in attendance.

c. *Credibility*

I discredit LaFollette insofar as she attributed Sherlock to saying that the hourly wage for employees would reduce to $4.25 and Respondent did not have to negotiate. Sherlock admitted that the figure of $4.25 was stated during his English-language meetings, but only in his terming it the bottom of a range of wages that could be agreed on up $13 hourly. I believe LaFollette's testimony is a distorted recollection of the point, and that $4.25, while mentioned, was only done illustratively. Her testimony that he said Respondent simply did not have to negotiate was presented without any mannerisms showing this was an accurate recollection rather than another mistaken understanding of remarks. I discredit the assertion. Her final testimony naming Labor Day is not credited to the extent that she failed to attribute Sherlock's remarks on that point to rumor rather than his own prediction.

I am not convinced from Galaviz' demeanor in presenting the testimony the General Counsel relies on regarding one phase of this issue that his memory was reliable. It is particularly notable that Galaviz claimed, erroneously I believe, that Sherlock said that the company was not obliged to negotiate. This remark is so foreign to its much-repeated discussion of collective bargaining that without corroboration of any credible nature I must reject it.

However this evaluation does not apply to Galaviz' testimony that negotiations could be prolonged for years. Galaviz termed this a ''[well-remembered]'' recollection, and did so with convincing demeanor as to the point. It is also notable that he correctly remembered the essence of Sherlock's remarks about having time for a chance to better things for employees.

The record has scant evidence that would permit a direct evaluation of what interpreter Garcia conveyed in Spanish to the employees at two meetings on July 4. However a general weight of evidence shows Respondent's basic message by this point in the 3-month-long campaign. I believe Diaz Orozco has confused his experiences in meetings when Sherlock spoke other than on July 4, and someone interpreted. Sherlock's general denials and assertion that in the two meetings for Spanish-speaking employees he spoke only as his outline would show, constitutes a claim that he did not express to employees it would be futile that they support the Union. I am also influenced by Lopez' credible testimony that during both Spanish language sessions on July 4, interpreter Garcia did not vary from Sherlock's speech outline. The pocket-emptying demonstration has not been placed by any other witness as occurring on July 4, and Diaz Orozco's testimony about loss of benefits and inevitability of a strike is not corrorborated by others. I discredit the testimony of Diaz Orozco on this issue.

d. *Holding*

The surviving evidence in support of this allegation is that of Galaviz to the effect Respondent foresaw negotiations as lasting for years. In its strict sense this is plainly an expression of futility, for to have such an extreme delay in the benefits of collective representation would make it foolish to select a union in the first place. In *Airtex*, 308 NLRB 1135 (1992), an employer had predicted, in the context of other extreme statements of opposition to unionism, that ''negotiations could last a year.'' The Board held this to be a violation, and I see it as persuasive authority to so conclude here. See *Atlas Microfilming*, 267 NLRB 682, 685–686 (1983). Sherlock himself conceded that he probably said negotiations with the Union, if they should eventuate, could last for a year. I hold that the General Counsel has achieved substantial evidence to support complaint paragraph 11(b)

13. Paragraph 11(c)

a. *Issue*

The issue here is whether Sherlock unlawfully solicited employee complaints and grievances and promised, directly or by implication, to adjust them in order to induce employees to withdraw support from the Union.

b. *Evidence*

The General Counsel advances the same testimony of Black in support of this allegation as was referenced in complaint paragraph 11(a), above. Cardenas testified that at the July 4 meeting she attended where Garcia interpreted, Sherlock had asked for 12 months to ''change all the problems that were there.'' Galaviz testified about being in attendance at a meeting on July 4, where Sherlock did not have an interpreter. As described on the subject of complaint paragraph 11(b), above, he recalled Sherlock saying that if employees gave him an opportunity, he could better things for them.

c. *Credibility*

Black is credited as to her couching of remarks that are in general uncontested about Sherlock's request for a 1-year period to prove himself. As to Cardenas I found her demeanor so poor that I again discredit her testimony here. It is also contradicted by Lopez as to Spanish language speak-

ing in which form her comprehension would have been based. I believe that it suffices instead here to rely on Sherlock's testimony of a generalized seeking of employee forbearance until his ''management style'' was seen. I credit Galaviz based on his convincingly voiced demeanor here, and indications that he accurately recalled other portions of what Sherlock delivered in English.

d. *Holding*

The evidence here shows only that Sherlock sought time to prove himself and create better conditions. These abstract remarks do not constitute solicitation of employee problems, as opposed to soothing assurances that he could be fair. The issue pertains not only to whatever occurred in English-speaking meetings as among the six on July 4 that Black and Galaviz attended, but also a Spanish-speaking meeting attended by Cardenas. The finding of unlawful solicitation by Sherlock during other incidents of the campaign, as treated in complaint paragraph 10(g), above, does not carry over to the particular allegation made here. This issue is highly factual in nature, turning only on brief passages of Sherlock's remarks at a 24/25-hour meeting. The proofs are insufficient to validate this allegation. I hold that the General Counsel has not acheived substantial evidence in support of complaint paragraph 11(c).

14. Paragraph 11(d)

a. *Issue*

The issue here is whether Sherlock unlawfully threatened employees with reduced wages and benefits if they selected the Union as their collective-bargaining representative.

b. *Evidence*

Serebrenicoff testified that Sherlock said wages would go down to $4.25 if employees voted in the Union. She extended this somewhat by also testifying that he said employees would be getting $4.25 an hour, which is ''where the bargaining would start from.'' LaFollette's testimony as offered in support of complaint paragraph 11(b), above, was also to be applicable here. This, as with Serebrenicoff, was to the effect that wages would go down to the legal minimum if the Union came in. Earlier described testimony of Diaz Orozco and Black to this same effect was also advanced.

c. *Credibility*

I reject the testimony of Serebrenicoff on this issue. Her demeanor suggested an overstating of what Sherlock said at the meeting. Furthermore it occurred only during cross-examination and after an intervening weekend break before which her attention had been drawn to Sherlock's meeting of July 4. However at that point in her testimony she said nothing about the devastating prospect of a blanket pay reduction to minimum wage.

I discredit Serebrenicoff on this issue, an evaluation that has no bearing on other portions of the case to which her extensive testimony pertains. I have discredited LaFollette, Diaz Orozco, and Black regarding allegations of complaint paragraphs 11(a) and (b), above, and that evaluation based on my stated reasons in each instance also applies here.

d. *Holding*

The credibility resolutions made here leaves an absence of any proof that Sherlock threatened employees at an English or Spanish-speaking meeting on July 4 in the manner alleged. In any event an employer statement of bargaining that starts from ''zero,'' ''scratch,'' or ''the minimum wage'' is lawful if the context of the statement is not coercive. *Somerset Welding & Steel*, 314 NLRB 829 (1994). Utterances essentially to no more effect than that benefits can be lost in the bargaining process are not unlawful. The Board particularly found this to be the case in *BI-LO*, 303 NLRB 749 (1991), where parties had ''no track record of past negotiations'' from which to anticipate what might be gained or lost through bargaining. The same point was made in *Jordan Marsh Stores Corp*., 317 NLRB 460, 466–467 (1995), where the employer's statement was how either party to negotiations could ''end up with more or end up with less.'' The context here, considered too from the saturating effect of Respondent's video series, was to this same problematic effect. I hold that the General Counsel has not achieved substantial evidence to support complaint paragraph 11(d).

15. Paragraph 11(e)

a. *Issue*

The issue here is whether Sherlock unlawfully informed employees that in the event they selected the Union as their collective-bargaining representative the Respondent would fail and refuse to bargain in good faith by intentionally stalling or otherwise prolonging negotiations for 5 to 6 years.

b. *Evidence*

Here Serebrenicoff testified that Sherlock had said Respondent did not have to sit down and bargain, while predicting that the employees would be out on strike by Labor Day. Testimony to the same effect was also made by LaFollette. The testimony of Galaviz in support of complaint paragraph 11(b), above, to the effect that negotiations could be prolonged for years, is again applicable. However now his response to a succeeding question of counsel for the Union is that Sherlock gave 5 to 6 years as the length of time that negotiations could be prolonged. Finally, Morgan testified that Sherlock had said how in disagreeing with union bargaining requests, Respondent could actually go backwards in pay and negotiate down to less than current rates.

c. *Credibility*

The credibility resolutions previously made again apply to the instances of testimony by Serebrenicoff and LaFollette. As it would pertain to allegations made here, each of these witnesses for the General Counsel have been discredited, and the reason for such an evaluation continues to apply. Galaviz padded his original description of Sherlock having forseen a prolonging of negotiations for years, and here fixed that timespan as the range of 5 to 6 years. I believe from the demeanor projected by Galaviz in making this elaboration that it is not truly a fact.

My contrary conviction is that Galaviz simply imagined this embellishment. According to Galaviz, it was heard during an English-speaking meeting of Sherlock's sessions throughout the day of July 4, yet no other witness has come

up with such a startling prophecy. I conclude it was not said, and now discredit Galaviz to that extent. Morgan is not discredited; however, her testimony does not show impermissible remarks, or expression beyond what Respondent had been repeatedly telling employees about the realities of collective bargaining.

d. *Holding*

As with complaint paragraph 11(d), above, there is an absence of any proof that Sherlock acted unlawfully as alleged. I hold that the General Counsel has not achieved substantial evidence to support complaint paragraph 11(e).

E. *Unit Appropriateness*

1. Hotel unit

The representation case resulted in conclusive determination by the Board under Section 9(b) of the Act as to a separately appropriate hotel bargaining unit. This determination was complete in defining scope of that unit, and except in very minor regard specific as to its composition. This slight exception concerned five status clerks and a payroll clerk of the housekeeping department, all of whom were expressly permitted to vote subject to challenge. As a matter of nomenclature internal to the hotel, these individuals were classified as ''office personnel'' of the housekeeping department. The individuals holding these position titles were entered on the employer's *Excelsior* list (with the unexplained exception of Pamela Dimascio). The parties have now stipulated to the inclusion of all such individuals.

Section 102.67(f) of the Board's Rules and Regulations concerning procedure in representation cases states:

> The parties may, at any time, waive their right to request review. Failure to request review shall preclude such parties from relitigating, in any related subsequent unfair labor practice proceeding, any issue which was, or could have been, raised in the representation proceeding. Denial of a request for review shall constitute an affirmance of the Regional Director's action which shall also preclude relitigating any such issues in any related subsequent unfair labor practice proceeding.

An employer's perseverance in maintaining a particular position regarding representation case issues is often dealt with through the case law by an association to this provision of the Rules and Regulations. As to such a situation the Board commonly states:

> It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent [resisting a bargaining order] is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding. *Wickes Furniture*, 261 NLRB 1062, 1063 (1982); *Dependable Tile Co*., 268 NLRB 1147, 1151 (1984); *Cedar Grove Manor Convalescent Center*, 314 NLRB 642, 653 (1994).

Respondent acknowledges the force of Section 102.67(f), while continuing to maintain its contention that an erroneous inclusion of three supervisory classifications makes the pleaded hotel unit inappropriate. The classifications so viewed were identified by Respondent's counsel as valet supervisor (shift supervisor), bell supervisor (bell captain), and front desk chief clerk (chief guest service agent/senior front desk clerk). However Respondent expressly chose not to attempt the introduction of evidence in support of this contention.

In consequence no exception to the bar against relitigation exists on the basis of attempted introduction of evidence or an express claim of special circumstances. As the administrative law judge wrote in *Cedar Grove Manor*, I am, needless to say, bound by the unit determination as made by the Regional Director and reviewed by the Board. The hotel unit set forth in the complaint is appropriate for collective bargaining within meaning of the Act.

2. Slot unit

On June 18, the Union filed a petition docketed as Case 28–RC–5141 for a stand-alone slot department unit. The unit sought as an organizationally separate slot department included magic booth and coin room employees. There were customary exclusions stated in the petition, along with the phrasing ''all other employees'' of the establishment as a part of the exclusions.

The complaint in this consolidated case pleaded a separate slot unit assertedly appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act. It reads:

> All Slot department floorpersons, change persons, carousel attendants, booth cashiers, slot mechanics (techs), slot mechanic (tech) trainees employed by the Respondent at the Respondent's facility, *but excluding* all other employees, office clerical employees, guards, and supervisors, as defined in the Act, as amended.

The General Counsel's later motion to amend the complaint, made during the course of hearing to add the occupation of money runner as an inclusion to the unit, was granted.

There had been no significant proceedings on Case 28–RC–5141 before issuance of the complaint on February 25, 1994. However the Regional Office had made a conscious choice on review of the original record in Case 28–RC–5105 not to include magic booth or coin room employees in pleading a separate slot unit. At the hearing session on May 9, 1995, counsel for the Union acquiesced in appropriateness of the slot unit set forth in the complaint, notwithstanding its variance from the scope of a slot unit set forth in the originating petition of Case 28–RC–5141. On the same date Respondent's counsel stated its position to be that a primary, if not sole, issue raised by the employer would relate to inclusion of floor persons. On May 10, 1995, Respondent's statement of position on the pleaded slot unit became that it was inappropriate ''due to the fact'' that assertedly supervisory floor persons were included in the unit. Respondent appears to have confined itself to this sole contention, for its brief argues only the issue of floor persons' status when viewed in terms of Section 2(11) of the Act where a statutory supervisor is defined.

The total gambling opportunities of Respondent's facility comprise (1) a casino pit, (2) the race/sports, poker, and keno features, (3) slot operations, and (4) supportive functions. It

is common to contrast several dozen live table games of the casino function with slot machine operations. For purposes here contrast may initially be made in terms of different uniforms, skills, training, scheduling, supervision, and earnings of table game dealers versus slot department employees.

This entire and principal business function of the facility is headed by a senior vice president of casino operations, followed in overall hierarchy by an assistant casino manager. Below these executive levels a split occurs with separate lines of management in effect with the two predominant functions of casino table games and slot operations. The former function utilizes casino shift managers and an array of lower supervision to fully oversee live table games, and particularly the more complex gambling of craps and 21 (blackjack).

A director of slot operations heads that department. The continuous 24-hour-a-day function is overseen by three slot shift managers (units one), three assistant shift managers (units two), and three second assistant shift managers (units three). Days off and other absence of such managers are handled by stepping up of a subordinate unit, even though this leaves the lower one temporarily vacant.

By the time of April, and aside from a supervisory master slot mechanic, 7 slot mechanics (slot techs), their 3 trainees, and 3 money runners, the department was otherwise comprised of approximately 40 booth or carousel employees, 40 change persons, and the 35 floor persons in dispute as to status. The slot mechanics and their aspiring trainees work out of an on-premises shop, making repair calls to the floor to handle malfunction or jamming of a slot machine. At particularly busy times one might be at standby on the floor for more speedy response to a machine. Money runners transport cash, coin and chips between change banks, cashier booths, carousels, and the money cage annex, plus resupplying coin dispensing machines. Booth cashiers work at a window selling coin to customers, redeeming it from them on request, or supplying slot department personnel with money for replenishment of banks. Carousel attendants staff a raised octagonal structure surrounded by dollar slot machines to conveniently service customers by selling or cashing out coin, providing simple customer service, and promoting a magic club card that further encourages play of the slot machines. Change persons roam an assigned area of the slot floor pushing a wheeled change cart, and wearing a distinctive uniform vest to show their on-the-spot availability for customers to buy or sell back coin.

The disputed classification of floor person involves minor repair of a slot machine with simple tools, or clearing jams as revealed by a machine code card. Such employees also take a machine out of service when a slot mechanic is needed for repairs, begin the procedure for jackpot payout winnings, and complete an interrupted coin payout. The formal job description for this nonexempt, hourly paid position states among its purposes to ''[S]upervise change, carousel, and booth personnel to maintain guest service and satisfaction.''

While no party is overtly contesting the functionally stated scope of this alleged appropriate unit, the significant number of floor persons that are present in slot operations, roughly one quarter of the entire department, neccesitates a holding with respect to claimed supervisory status before any consideration could be given to larger questions turning on community of interest in the department as a whole. The complement of floor persons is dispersed among seven major sections of the slot department, and miscellaneous areas the size of which does not justify a constant or specific assignment. A few floor persons fulfill ''breaker [or] floater'' functions to cover break and lunchtimes plus any special need for fill-in. A floor person can modify scheduled breaktime of change persons, carousel attendants and booth cashiers on their own initiative. Employee evaluations in the department are done by a person no lower than assistant shift manager, and in any case not by a floor person. The same pattern exists for written warnings of a work deficiency, although a floor person might verbally direct a strayed change person back to their assigned area.

A significant function, one performed at one time or another by most of the floor persons, is to guide an employee of the slot department toward advancement into the floor person classification by a training regimen. This is done by completion of lesson plans contained in a five-page training outline created by a slot shift manager. The prospective floor person is normally already a money runner within the department. The candidate trains on their own time under scrutiny of a floor person. The length of time to complete this training depends only on the candidate's learning ability and frequency of effort with lesson plans.

The required subjects are (1) determination of jackpot, machine, and hand payouts for different slot machines, (2) use of slot department forms, (3) orientation to machine malfunction codes, (4) understanding of hopper functions, (5) working familiarity with coin comparators/rejectors and diverters, and (6) a thorough understanding of the floor persons' manual (policy and procedures). The training floor person does initial sign off on the first five subjects, while the slot shift manager signs or countersigns all the requirements. This manager ordinarily inclines toward a review of skill attainments with the trainer, but typically handles an assessment of the applicant's understanding of more abstract expectations in the floor persons' manual on their own as a final approval before promotion.

Respondent relies largely on *Clark & Wilkins Industries*, 290 NLRB 106 (1988), in arguing that disjunctive application of the definitions for supervisory status set forth in Section 2(11) requires a conclusion that these floor persons are statutory supervisors. It points particularly to their fulfillment of evaluation activity on lower paid employees, and redeployment of such employees to best achieve floor coverage that conveniences slot players.

In *Reno Hilton*, 282 NLRB 819 (1987), the Board held that a lead stage technician of the entertainment department was a statutory supervisor by reason of his responsible direction of other stage technicians. This was particularly true during the twice nightly extravaganzas when he revised assignments of particular tasks or cues, and chose technicians to correct problems both during performances and as possible to do in breaks between shows. Finally the incumbent of this lead stage technician job selected persons for overtime work on special projects, and orally reprimanded technicians for dereliction of duty with a report of such reprimand reaching the stage manager for reliance in making an overall employee performance appraisal.

In *Iron Mountain Forge Corp*., 278 NLRB 255 (1986), leadmen were held to be supervisors where over half their

time was spent in checking on production workers, directing adjustments in their productivity rate or quality level, and making reassignments necessary to fulfill a daily production schedule. The Board was satisfied that detailed written employee evaluations made by these leadmen constituted effective recommendations well beyond what might be routine in nature. Additionally, that case meant that without a holding of statutory supervisory status for such leadmen particular departments or a whole shift would have no first-level oversight, and a disproportionately high 60:1 employee/supervisor ratio would result.

The fact situation here is fully distinguishable from what is present in *Clark & Wilkins, Reno Hilton*, and *Iron Mountain Forge*. The single supervisory issue litigated in *Clark & Wilkins* was resolved on a showing that the incumbent was a statutory supervisor by reason of the responsible direction of other employees ''within the meaning of Section 2(11) of the Act.'' The characterization of responsible direction applied because this incumbent often made his own determination in rotating employees between work stations, judged when a job was complete, and influentially informed higher management of his dissatisfaction with a person.

Responsibilities of this nature are clearly beyond the casual variations effected by floor persons here to maintain a more stable presentation of money changing services during the ongoing flow of customers at and among the slot machine arrays. Comparably too, in contrasting *Reno Hilton*, these floor persons function in a brisk, but continuous and deadline-free atmosphere of a casino. This differs from more urgent choices drawing out independent judgment of a lead stage technician facing circumstances imperiling an entertainment show in progress or about to resume.

Finally, the *Iron Mountain Forge* case provides little support for Respondent's contention here, involving as it did ''urgently needed'' determinations of leadmen, and to be done spontaneously without the luxury of consulting anyone as to how their reassignments would affect basic quality and quantity of the product.

The floor persons have no discernible role under the statutory categories of duties that define a supervisor in terms of authority to hire, transfer, suspend, lay off, recall, promote, discharge, reward or discipline of employees, or adjustment of their grievances. This leaves only the prospect of whether floor persons of the slot department are assigning, directing, or effectively recommending assignment or direction of lower paid employees within their department and ordinarily in their own locations. I do not find the evidence establishes that is the case. These floor persons instead are in a random presence that combines customer relations, machine maintenance, celebratory participation in jackpot payouts, and primarily happenstance contact with colleagues as a more esteemed person among the servicing employees. They perhaps temper the duties of change persons along with booth and carousel employees as to how floor coverage is best achieved, but this is more a jiggling than making any truly significant change. The training function they carry out is not supervisory in nature, but instead merely imparting their experience to floor person candidates and routinely recording an objective attainment of proficiency in the trainee.

In two past cases the Board excluded slot floormen from a casino unit by holding them to be supervisory with the meaning of Section 2(11). In *Landmark Hotel & Casino*, 194 NLRB 815 (1972), the reason was that floormen's overall duties and responsibilities were ''generally the same'' as a slot shift supervisor, while in *Desert Inn Hotel*, 194 NLRB 819 (1972), a comparable decision was reached because floormen there also generally performed the same functions as a slot supervisor which demonstrated the ''similarity in the positions.'' These exclusions were made notwithstanding that the floormen in each case were paid hourly, and the slot supervisor positions with which they were equated earned salaries.

The most prominent factor respecting this issue is the number of floor persons utilized in slot operations compared to the overall rank-and-file complement of the department. A slot shift manager testified to the typical breakdown of the 14 floor persons utilized on both day and swing shifts, with only nine ordinarily needed on graveyard shift. This breakdown would expect to be similar with overall numbers among the also predominant change persons, booth and carousel employees of the slot department. The 10 slot mechanics or tech trainees are clearly outside any supervisory ambit of floor persons. This increases a percentage for the disputed classification to about one-third of the total number of employees having a regular presence on the floor to serve customers. With a minimum of two and often three layers of supervisors above floor persons (the ''units''), this 3:1 ratio would leave a disproportionate number of supervisors in the total activity of slot operations. From total circumstances shown, I hold that floor persons are not supervisory within the meaning of Section 2(11) of the Act.

The matter of whether a separate slot department unit is appropriate under the Act remains for assessment. Threshold principles are that selection of an appropriate bargaining unit lies largely within discretion of the Board, whose decision ''if not final, is rarely to be disturbed.'' *South Prairie Construction Co. v. Operating Engineers*, 425 U.S. 800 (1976), citing *Packard Motor Co. v. NLRB*, 330 U.S. 485, 491 (1947). The Board need not certify the most appropriate unit, but need only choose an appropriate unit. *Nightingale Oil Co. v. NLRB*, 905 F.2d 528, 535 (1st Cir. 1990). Determination of an appropriate bargaining unit under Section 9(b) of the Act is a matter committed to the agency's broad discretion, absent a decision of arbitrary or capricious nature. *NLRB v. Carson Cable TV*, 795 F.2d 879, 884 (9th Cir. 1986).

There are two variants to the insular nature of slot department operations. One is the situation resulting from about 70 gaming devices as a video poker machine embedded in the surface of bars throughout the facility. Coin needed by patrons for the play of such machines could be obtained from a bartender, and winnings achieved by players at a bar are paid out by the bartender. If a machine malfunction occurs, the bartender is expected to call the slot department office for assistance. Second, cocktail servers of the beverage department are regularly present, or called for drink service, in the the slot operations area. I do not consider these variants have such impact on the commonality of interest among basic slot department employees to upset a finding of appropriateness for the separate unit sought by the Union.

Entry level to the slot department is the change person position, one ordinarily filled from within the facility. The change person job requires no particular skill or training, and is often taken by a transfer from Respondent's housekeeping

department. Advancement to the more highly paid or responsible positions of carousel attendant or booth cashier is exclusively done by change persons wishing a higher capacity. This pattern continues in still further advancement as money runner or on to become a floor person.

Casino shift managers have no authority in the slot department, and conversely the director of slots and his nonuniformed supervisory units have no authority concerning live gaming operations of the casino. There is neither temporary nor permanent interchange of employees between the casino and slot functions, and only one person with prior experience in live table dealing has transferred from slots to live table dealing in the casino.

The slot department employees participate in common fringe benefits with all Respondent's employees, use general employee parking privileges, and take meals in the EDR along with most others. There are tipped employees who commonly pool such income, receive overtime pay if holding a nonexempt position, and below the level of supervisory ''unit'' wear one of several uniform outfits that distinctly identifies a particular type of slot employee.

In *Bally's Park Place, Inc*., 255 NLRB 63 (1981), the Board found a slot department to be appropriate from the paramount significance of such employees possessing skills and duties completely different from the more numerous dealers of gaming tables. The distinctive nature of slot department employees and separate immediate supervision by a slot department manager impelled the Board to find the unit appropriate. Noting that a casino-wide unit could also be appropriate in *Bally's Park Place*, the Board believed this did not preclude finding a departmental unit appropriate when that was what petitioner sought and no other labor organization was contending for an alternative unit of all casino employees. In this direct regard the Board distinguished *Nevada Club*, 178 NLRB 81 (1969), where a separate unit of slot attendants and mechanics was not adopted, because those employees shared the same immediate and intermediate supervision as all casino employees.

The separately run slot department at Respondent's property, coupled with specialized duties of its personnel and absence of interchange with other casino operations, is sufficient to establish a clear and requisite community of interest. I hold the slot unit to be appropriate for collective bargaining within the meaning of Section 9(b) as pleaded by the General Counsel.

F. *Authorization Cards*

1. *Text*

When the Union's campaign originally commenced in January, the only form of authorization card normally available for tendering to prospective signers was a large two-sided version. The front side contained a request for membership in the Union for the purpose that it ''act for me as a collective bargaining agency in all matters relating to rates of pay, wages, hours of employment, and other conditions of employment . . . . Space was provided for a person making such request to enter identifying information plus a date and signature on the card. The large card also had a reverse side permitting a dues-checkoff authorization to the Union. This large version has become termed the ''dual purpose'' cards.

Arrangements for the open house on January 25 included bringing a supply of smaller cards for overall use in the organizing campaign about to begin. This small card was a simple one-sided version with lines for the identifying information of address, employment category, pay rate, and the critical signature, for which a date of signing was also to be shown. The prominent and only heading on the small card read, ''I HEREBY AUTHORIZE THE UNITED STEELWORKERS OF AMERICA—AFL–CIO–CLC TO REPRESENT ME IN COLLECTIVE BARGAINING.'' This small version has become termed the ''single purpose'' cards.

The distinction about card text before and after January is not absolute. For example a small card of housekeeping department upholsterer William Helzer was accepted, completed, and returned to card solicitor Alice Serebrenicoff on January *20*. Conversely, a large card of guest services employee Gordon Powell was completed at the union hall on March 26 for return to card solicitor Martha Montoya there at a time when the Union's supply of small cards was briefly exhausted.

2. Card purpose

In *Cumberland Shoe Corp*., 144 NLRB 1268 (1963), the authorization cards at issue explicitly showed on their face that the involved labor organization was only to act as a bargaining agency for employees. Some of the cards solicited by fellow employees were completed after the signator was told that a purpose was to secure an election. The Board noted, however, that none of the signatories were told ''this was the *only* purpose of the cards'' (emphasis added). The Board held this did not negate ''the overt action'' of employees in designating the labor organization as their bargaining agent, nor that they were beguiled into signing the cards. The decision was enforced in *NLRB v. Cumberland Shoe Corp*., 351 F.2d 917 (6th Cir. 1965), with the court noting a ''wholly unambiguous'' nature of the cards in relating ''solely to authorization of union representation as collective bargaining representative,'' and the fact that no person signing such a card was told an election was the only purpose.

In *Levi Strauss & Co*., 172 NLRB 732 (1968), the Board restated and enlarged on its reasons for adopting the principle of *Cumberland Shoe*. In doing so it (1) rejected any assumption that an employee would not comprehend the ''act of signing''; (2) noted that authorization cards are often solicited for a ''concurrent purpose''; (3) observed that it is ''only to be expected that there will be considerable talk during an organization campaign of a contemplated representation proceeding''; and (4) affirmed substance over form in writing that a totality of circumstances surrounding card solicitation would be looked to on the question of whether some explicit or indirect representation had been made to the effect that cards would only be for an election.

In *NLRB v. Gissel Packing Co*., 395 U.S. 575, 606–607, (1969), the Court recognized *Cumberland Shoe* as doctrine in administration of the Act, and approved it by stating:

> [W]e think it sufficient to point out that employees should be bound by the clear language of what they sign unless that language is deliberately and clearly canceled by a union adherent with words calculated to direct the signer to disregard and forget the language above his signature.

The Court expressly found nothing inconsistent with tendering a card to an employee for the authorization of a union to represent him or her, while saying even at the time ''the card will probably be used first to get an election.''

A context for the later and extensive activity of obtaining authorization cards was established by Mongello at the home meeting on January 6 with avid Union supporters. Mongello testified to anticipating events that would ensue from the solicitation of authorization cards, and particularly the large dual purpose card. He explained to the small group present that night how the large dual purpose card should be clarified with interested employees as to its limited representational purpose, and not that it would constitute an application for membership in the Union or a basis to become subject to payment of dues. He is effectively corroborated in this regard by attendees Serebrenicoff, Morgan, and LaFollette.

At the open house of January 25, Mongello was first confronted by rank-and-file employees who appeared for the event out of interest or at least curiosity. This turnout also involved various and comingled persons for whom Spanish was their native language, and English language fluency was limited or nonfunctional. Mongello testified that as groups formed convenient to be spoken with collectively, he repeatedly explained the representational purpose of cards they would be offered, and that an election could result during some eventual course of the Union's organizational campaign.

Mongello enlarged on this picture by testifying that when new and enthusiastic volunteers materialized from the open house visitors, he and other officials would break away with those individuals for planning their role and reemphasize how the cards they would handle were to support the Union in its objective and constitute an express request for representation in matters of collective bargaining. Mongello's own Spanish language fluency, while limited, is enough to ''get [his] point across,'' and he did some Spanish-speaking during this time himself. He also testified that Roberto Fernandez would go off to the side with Spanish-speaking groups for more extended discussion in that language of authorization card purposes. Illustrative corroboration of what Mongello routinely told employees at the open house was given by Cocktail Server Kelli West, who testified that while attending the open house she plainly heard him say the pupose of an authorization card was for representation by the Union in collective bargaining.

The next prominent assembly of persons interested in the Union's organizing drive occurred at the fish fry on February 23. Approximately 100 employees, intendedly Hispanic, appeared during the 10-hour timespan of the fish fry. Fernandez was the chief spokesperson to such individuals; however, he did coordinate his remarks with Mongello who was also there. Fernandez estimated that over 20 times there was a sufficient assemblage of people to warrant informative group remarks, which he made in Spanish as Mongello also spoke about this to the best of his ability. Fernandez testified that they both explained the purpose of cards to be an authorization for the Union to represent signers in collective bargaining.

The ongoing effort at accumulating authorization cards which effectively began on January 25 was a continual activity for roughly the next 5 months. Many individuals became card solicitors, some much more active than others. All card solicitors called as witnesses uniformly testified they neither said, nor heard it said, that a sole purpose for authorization cards was to obtain an election. They testified instead, with the most prominent few achieving substantially more card signers than others being Serebrenicoff, Morgan, Montoya, and Bryant, that such sole purpose was never voiced. These witnesses testified on the contrary that each solicited employee was told, or knew, the purpose of a card was to request representation.

Serebrenicoff testified that she explained as a standard thing every time of handing out a card that it was to authorize representation by the Union and not to be for membership. Morgan testified that for every employee to whom she handed a card her accompanying explanation was that it would support the Union in seeking recognition from the employer, and were this not accorded the Steelworkers ''would have to probably go to an election.'' Morgan added that when she had earlier passed out the ''three-fold large card'' she had told employees not to be concerned with the membership pledge or dues authorization sections of the card, but instead only sign it if ''they wanted representation.'' Montoya, who is fluent in both English and Spanish, testified that she generally told employees the authorization card was to ask for representation from the Steelworkers, and while not for an election would be used by the Union to seek recognition. Bryant, the chief slot department solicitor, testified that in her mind everyone in that operation was ''well aware'' of what the authorization cards represented, and in any event she never stated that the only purpose of completing a card was to request an election. However, she also testified to being in casual group conversation on a daily basis with all slot department employees to whom she had tendered cards, and during these gatherings making remarks that the purpose of such cards was to have the Union represent employees in collective bargaining with Respondent.

The General Counsel produced a total of 24 employee witnesses who had successfully solicited at least 1 card from the hotel unit employees, and 4 others (exclusive of Serebrenicoff) who had done so among the slot unit, plus Fernandez and assisting nonemployee Juan Banuelas. Each of these 30 individuals testified to the common effect that employees solicited for card signing were told that the purpose of doing so was to acquire representation by the Steelworkers, and that in no case was a person told that the *only* purpose in signing a card was to get an election. The General Counsel also produced 24 persons to authenticate a signature on their own card, and who each testified that either no person had stated the *sole* purpose of a card was to have an election or that they otherwise understood and intended from the circumstances that the purpose was for representation by the Union. The Charging Party also called Head Seamstress Gloria Creson as its first witness, and she testified similarly to being told card signing was for representation by the Union, but not that a sole purpose was to have an election.

The testimony of two employee cardsigners warrants some special description. Former guest room attendant, Benjamin Dunkle, authenticated his signature on an authorization card dated April 5. He had read the enabling language on the card about an authorization running to the Union, and was not told by anybody that the only purpose in completing it was to request an election. Dunkle testified to receiving the card ''during an orientation on the [U]nion,'' and had it collected

back along with others when the meeting was over. This orientation had taken place in a conference room, with the group speaker being the person who handed out cards to those attending. His elaborating testimony pictured the orientation as a mandatory meeting for employees, and the card solicitor to be a consultant.

In the second special circumstance, Bellman Charles Sabol authenticated his signature on an authorization card dated March 28. He had also read the printed enabling authorization language of the card before signing it, and no person told him the only purpose was to secure an election. Sabol had been given the card by Bellman Jack Ubel, and was encouraged to sign it by Ralph Durbin. Sabol also testified to his subjective motivations in signing the card as (1) placating ''strong organizers'' in his department, (2) wanting to ''fit in'' with his work group, and (3) that he was not ''on anybody's side here.'' Sabol expressly stated that he had not been forced or coerced into signing by either Ubel or Durbin.

3. Manner of completion

The General Counsel has introduced over 500 signed authorization cards from persons employed in the hotel unit as of April 28. In a few instances there are duplicate cards resulting from a second signing by the same person. For the slot unit 78 cards were introduced, most of which had been obtained by Bryant, with principal assistance in that department from Floor Person Gary Barhydt. Additionally the General Counsel introduced 106 ''course of campaign'' cards emanating in total from both units, which shall be dealt with later in this decision as a separate subject.

A wide range of effort and result by card solicitors emerged during the overall course of the Union's organizing drive. For Fernandez it was a job, and he testified to the acquisition of over 50 signed cards. For a half dozen leading activists among the in-house committee it seemed a mission, with Serebrenicoff, Montoya, Morgan, Bryant, Miller, and Malhiot each at or above the level of 50 cards obtained. Another approximately dozen and a half card solicitors testified to a middling number from several into the twenties, and insofar as is known a final group testified only as to the circumstances of obtaining signed cards from one or two fellow employees. Each card solicitor but one was also a self signator, and verified their own card.

The place at which cards were provided, and where ultimately collected back, varied widely. Often this occurred at the facility, in passageways, locker rooms, the EDR, the parking structure or other locations. In many other cases cards were obtained around the community, in homes, or in commercial places of business.

With the high percentage of Hispanic employees, the matter of comprehension between speakers of different languages is a major consideration. The magnitude of this factor is even reflected in Respondent's formal program of English language proficiency attainment that is offered to employees. The interface here is confined to English and Spanish, there being no reference to any other language that would complicate the process of explaining purpose of a union authorization card and the related need that it be truly comprehended by a person wishing such representation.

The testimony of the General Counsel's witnesses described various ways in which language difficulties were surmounted. Often a volunteer person would aid in bridging the language gap with an interpretation of conversation. At times the speakers improvised in each other's language to increase or better assure comprehension. For example, Quintana, who testified by a Spanish language interpreter, considers he has a little fluency in English and acquired over half the nine cards he solicited by communicating with the signer in English. In yet other instances a prospective card signer would take the blank card to attempt their own assessment of it with the help of friends or family. This factor also inspired solicitors in frequent instances to write in all or portions of the identifying information, so that the actual spaces for signature and date would be isolated for personal completion by the employee.

There were also cultural variants that affected the results of how the cards appeared in their final form. Often a Hispanic employee would unexpectedly present with a hyphenated or multiple surname. Another frequent variation was the cultural practice of Latinos to enter numerals of a calendar date with the day preceding the month. In the larger sense of pure human nature the written year of card completion might be incorrect because of careless attention to the detail or past habit after a new year had begun.

The roughly 600 cards that Mongello filed in support of the representation petition were each date stamped on their reverse side at the Regional Office on March 26. Many of the cards that were acquired after the filing were accumulated over succeeding months, and later provided to the Regional Office for date stamping on December 20. The circumstances of these group date stampings is a factor used by proponents of the authorization cards to support their validity.

The many variations in how authorization cards were completed, and their resultant appearance as an item of evidence, is evaluated by an essential test of whether a signer sufficiently comprehended the card purpose. In *Maximum Precision Metal Products*, 236 NLRB 1417, 1424–1425 (1978), the Board adopted findings that several employees on whom the issue of majority status hinged had no reading or communication proficiency in the English language. The cards involved were in English, which precluded any presumption that the signator intended to authorize union representation absent evidence more than a mere signature. On this basis four cards were not counted toward a majority, when the individuals signing them could not read the face of the card and they were not given information on the card's purpose beyond vague mention of a union or that the card was to have an election. A contrasting fact situation was present in *Bakers of Paris*, 288 NLRB 991 (1988), enfd. *NLRB v. Bakers of Paris*, 929 F.2d 1427 (9th Cir. 1991), where a language barrier was overcome by evidence that signers knew or were advised in their own language about the purpose and significance of authorization cards.

There are no established instances here in which a card signer was not shown to be reasonably enough aware of the card purpose as a matter of language comprehension. The court in *Bakers of Paris* stated, ''It is for the party who seeks to invalidate a signed authorization card to show that the signer was incapable of reading the authorization card.'' This has also been the implicit view in cases where ''language difficulties'' or explanation ''in a language that [card signers] understood'' was present. *El Rancho Market*, 235

NLRB 468, 474 (1978); *NLRB v. Security Plating Co*., 356 F.2d 725, 727 (9th Cir. 1966).

It is necesssary for the intent of an employee to be made clear by the entry of a signature. *Essex Wire Corp*., 188 NLRB 397, 413 (1971); *Capitol-Varsity Cleaning Co*., 163 NLRB 1057, 1061 (1967). However a printed, not cursive, name written as a presumed signature will not invalidate a card, even where the act of printing was not witnessed nor the employee involved called to testify. *McEwen Mfg. Co*., 172 NLRB 990, 993 (1968).

The time of granting representation authority to a labor organization must be relevant to the point at which a majority status is determined. However discrepany in the date written on a particular card need not invalidate it. The anomaly of different color ink on a card, or extraneous writings particularly on the reverse side, are two other facts along with conflicts in dating which need not ''cast a valid doubt'' on cards under consideration and which an employer has specifically challenged. *Jasta Mfg. Co*., 246 NLRB 48, 63 (1979).

4. Authenticity

This organizing campaign was seriously structured with managing personnel from the Union, resources, and an enthusiastic group of in-house advocates. The authorization cards that resulted show a wide variety of appearances as to completeness and clarity of employee intent. The key question, however, is that of whether from all circumstances any given card appears to genuinely express a timely desire for representation by the Union.

First is a matter of credibility. I had the specific impression from each testifying card solicitor, and those who were called only to authenticate their own card, that all these individuals gave an honest rendition of what they did, saw, or heard. Second the disciplined manner in which this campaign was planned and carried out gave the sense that irregularities in written dates, as with use of the year 1992, information on the wrong line of a card, and cultural variations, were mere matters of carelessness or situational distraction within the larger good order of how signed cards were sought, acquired, and preserved.

The Union's key officials credibly emphasized that cards were distributed for the purpose of soliciting a request for representation, and card solicitors faithfully followed this message in their contacts with employees. Finally, Respondent has been in possession of a copy of each card introduced by the General Counsel since approximately June 1994 when an injunction under Section 10(j) of the Act was sought, a point in time from which an unusually long opporunity followed for the cards to be examined closely for defects. Notably, however, Respondent did not call a single witness to refute any description made about the overall effort to obtain cards or about any individual circumstance. I confidently find each card solicitor, and where pertinent each self-authenticating employee witness, to be credible on the issue.

The manner of developing this large showing of interest by the Union may usefully be contrasted to *Maximum Precision Metal Products* supra, a case on which Respondent places great reliance. In *Maximum Precision Metal*, the soliciting business agent seeking representation for a 23 person bargaining unit testified with ''hesitation and memory failure'' about his own acquisition of cards at a meeting, and it was unknown whether the employee he chose to solicit still more cards had the ability to speak effective English about the subject. If these two cases represent extremes in the approach to the same ultimate goal, it may accurately be said that the Union here earned its own reward by care and dedication of fulfillment.

a. *Approved*

I find authenticity for purposes of creating a labor organization's majority status as to all cards acquired by the 28 solicitors of at least 1 of the cards entered in evidence, the cards acquired by Fernandez and Banuelas, and the 25 cards as to which the signer themselves testified. I quantify this holding for the hotel unit by naming each card solicitor and their total number of acquired cards, including (except Quintana) their own card.

Serebrenicoff: 78; Montoya: 67; Morgan: 65; Miller: 51; Malhiot: 50; Galaviz: 21; Black: 17; LaFollette: 16; Crystal Banda: 13; James Flanagan: 13; Durbin: 12; Felix Rodriguez: 11; Cardenas: 9; Quintana: 9; Vasquez: 9; Ruben Soza-Ojeda: 7; Sara Rodriguez: 5; Francisco MacFarland: 4; Viera: 4; Nancy Nash: 3; Judy Seymour: 3; Doris Kanner: 2; Ruben Saldana: 2; and Kelli West: 2. This total is 473.

Fernandez acquired 54 of the cards entered into evidence, Banuelas acquired 1, and I add in the 1 acquired by Bryant from Beverley James before her crossover between bargaining units. An additional 25 persons satisfactorily identified their own signatures on authorization cards. These were Felix Aleman, Eliseo Barreras, Leona Burgess, Gloria Creson, Richard Dollar, Benjamin Dunkle, Charles Farris, Roy Figueroa, Eric Harms, Miguel Herrera-Gonzalez, Cecil Hinchberger, Vicente Jaramillo, Christopher Malone, Lisa McCracken (Baughman), Jaime/James (Garza) Molina, John Morris, Crispin Munguia, Judy Reels, Norman Reisch, Victor Reyna, Charles Sabol, Thomas Soto, Angela Swan, Josephine Taft, and George Taylor. The resultant arithmetic in totaling a final number of authenticated cards for the hotel unit, and which I approve, is 473 + 54 + 1 (Banuelas/Amaya) + 1 (Bryant/James) + 25 = 554.

Quantifying the number of valid cards in the slot unit is less complex. Bryant credibly authenticated 59 cards of persons employed in slots on April 28. Her own card makes the 60th one linked to her testimony. Husband and wife Gary Barhydt and Laura Fike, along with Rickey Jacobson, each authenticated nine, three, and three cards from the slot unit (including their own card), respectively. Serebrenicoff had also obtained, and credibly authenticated, three cards of the slot unit. The resultant arithmetic here, as a total which I approve, is 60 + 15 + 3 = 78.

b. *Disapproved*

I find no significant evidence that would warrant disapproval of any of the 554 and 78 authorization cards applicable to the hotel and slot units, respectively. The testimony of Dunkle, about whom I gave special comment, demonstrated mostly that his general memory was uncommonly poor. He had difficulty establishing his time of employment at Respondent, and his recollection of receiving an authorization card during an orientation meeting at a conference room of the facility is plainly erroneous. However he did identify his signature on the small card of emphasized single purpose for representation, and even attributed the orientation speaker

to saying that in terms of an election the card meant ''a last means of resort.'' In consequence there is nothing defective about his card in its essential form, and he had not experienced a statement from *anyone* that its *only* purpose would be for an election.

In Sabol's case, the second person as among the many witnesses concerning cards who gave a peculiar twist about their own card in testimony, I do not find anything about his subjectively rooted motivation that would disqualify his card from the count. Sabol's demeanor was such that he seemed determined to disassociate himself from once favoring the Union; however, there is no evidence that he was placed under duress from his colleagues, or for that matter any source. Additionally Sabol did not attempt an actual repudiation of the Union.

As to revocation generally, Serebrenicoff testified that employees Sharon Cosgrove, Richard Hansen, and ''Wanda'' asked her to return their cards after they had been turned over to the Union. Serebrenicoff is certain that in Cosgrove's case this occurred after April 28. She cannot fix the exact time of Hansen's or Wanda's attempted revocation, except to place it probably in the latter part of April. The General Counsel relies on the cards of both Cosgrove and Hansen in support of its claimed majority status for representation in the hotel unit.

Approximately 3 months had passed since Cosgrove and Hansen signed their authorization cards, and Respondent's unfair labor pracices had begun at a time in April which likely preceded any attempted revocation. The Board presumes that attempted revocation of cards is ineffective when it follows the onset of coercive conduct by an employer designed to undermine support of a union's organizing drive. Cf. *Lott's Electric Co*., 293 NLRB 297, 312 (1989). From what the record shows, I see no reason to disapprove either the Cosgrove or Hansen card.

5. Company's contentions of invalidity, incompleteness, and inaccuracy

Respondent devoted one section of its brief to contentions that six particular authorization cards were invalid because the signer claimedly could not comprehend or understand the card's purpose. The first of these concerns Esther Amaya, who is not fluent in English. However Banuelas participated actively in solicitation of this card by communicating with Amaya in Spanish concerning its purpose, and credibly testified to seeing her sign it. The second instance in this category concerns Maria Espinoza. Serebrenicoff brokered this card with the Spanish-speaking Espinoza, but arranged for bi-lingual Guadalupe Marquez to interpret the situation for Espinoza as the three of them were together in the ladies locker room. Marquez is herself a card-signer, and all three of these individuals were employed in the same classification of custodial porter. Serebrenicoff credibly testified that she detected similarities as Marquez was speaking in certain Spanish words to their English counterparts. I infer from the consistencies present in the card solicitation process generally, and the probabilities of these brief circumstances, that Espinoza acquired a sufficient comprehension of what she was signing and the incident produced another valid card for the hotel unit. The card of Juana Chavez (Garcia) is also challenged on the same ground that a Spanish-speaking interpreter was used to establish her understanding of card purpose. However her card is dated May 6, and the General Counsel does not appear to rely on it as part of establishing majority in the hotel unit. The fourth card that Respondent challenges here is that of Arletta Bischoff, who according to her solicitor Serebrenicoff is a deaf mute. Serebrenicoff credibly testified that she communicated by note-writing to Bischoff, and I find this satisfies the requirement that a card-signer understood its purpose. Respondent contends that the card of Maria Castrejon-DeZamora is invalid because she does not speak English. Serebrenicoff testified about this card, recalling that Castrejon presented it to her in completed form in the ladies locker room. Serebrenicoff then prompted inquiringly with the Spanish word for name as an association to the signature on the card, and Castrejon confirmed this to be so. I infer those circumstances are sufficient to validate the Castrejon card. The final authorization card challenged on these general grounds by Respondent is that of Rosa Zayas, who speaks no English. However, Spanish-speaking Montoya credibly testified both to providing and receiving back the Zayas card from this employee in the property basement. The card bears a distinctive signature and is dated March 6. I find Zayas' card to be valid in support of a majority showing for the hotel unit.

Respondent raises other extensive objections to many of the authorization cards in evidence, both as to individual circumstances of the card or as to patterns of solicitation. There are at times multiple and overlapping bases to the various objections in this overall grouping. Many of the objections have a strained or insufficient rationale, pointing only to variants from pure completion of a blank document but devoid of any discounting evidence.

I first treat objections that are moot, because the General Counsel makes no claim of supporting majority from certain cards. The most obvious group is the duplicative cards, stemming from what circumstances drew Maria DeRefugia Olmos, Bobbi Beamer, James Malone, Jorge Soto, and Terry Gay to sign a second card. While one card is valid for each of these individuals, the second card is surplus and void as a matter of evidence. A related protest concerning Tracy McMaster (Vincent) does not show a duplicate card was entered into evidence, and the valid card of this person has been counted only once. Unsigned cards of Lesley Deiser, Jose Rodriguez, and Ed Rogers are not relied on by the General Counsel, and do not count in any tabulation toward majority status in either the hotel or slot units. The card of Dorena Squillante is dated June 21, and comparably not relied on by the General Counsel respecting the hotel unit.

A large body of these objections by Respondent relates to (1) entry of the year 1992 as a date of the card; (2) differing color ink in various configurations on the card; (3) differing handwriting on the card; (4) card solicitor's writing on a card; (5) overwriting on a card; (6) card solicitor's uncertainty as to time or details of actually providing or acquiring a signed card; and (7) third-party delivery of a card to the solicitor. I start with instances in which the General Counsel tacitly concedes the objections, because the challenged card has not been listed among those claimed to be part of a bargaining unit majority. These persons are Jorge Montoya, Veronica Becerra, Victor Quintero, Cesar Toca, and Garry Steve Knight. The cards of Stephen Vitangeli, Alejandro Beltran-Meza, Donald Hensley, and Mitch Walker are not claimed by the General Counsel to be valid in this context,

but they shall surface again as part of the ''course of campaign'' cards issue.

As to the balance of this body of objections, I have examined the challenged cards and the supportive testimony given to provide validation to a card. Having done so I expressly approve 20 cards already counted in the 554 for the hotel unit and 3 cards also already counted in the 78 for the slot unit. In the hotel unit the cards so approved are those of employees Susan Gray, Fred Corella, Raul Cruz-Garcia, Humberto Davila, Debra Honga, Alejandro Gomez, Joyce Stewart, Maurice Solis, Kenny Young, Danny Stanley, James Craig, Ramon Llamas, Victor Reyna, Armando Lopez, Roy Moots, Troy Ramirez, Diane Farnham, Melchor Ramirez, Mary Pierce, and Rafael Salas (Salas-Sanchez). I note there are two sets of cards for Pierce and Salas, who were referred to gingerly by card solicitor Galaviz as husband and wife and more plainly so by Montoya who had obtained the later set of cards. The General Counsel has chosen one card from each set for this couple as the formal evidence, so there is no duplication involved. In the slot unit the three expressly approved cards are those of employees Leonard Ferguson, Janet Stoneking, and Marie Granillo.

Respondent has also proposed that all cards as to which Morgan participated in the acquisition be invalidated, because she frequently filled in portions for the employee signer. But I find nothing defective about any instance cited as disqualifying involvement by Morgan. Respondent makes a similar contention as to five cards obtained by Montoya. Again my examination of the record relating to these five instances reveals no basis to invalidate any of these cards attributed to Montoya's activities. Javier Torres is among the five as listed in the objections; however, he is counted toward a hotel unit majority under the name Javier *Lopez*.

6. Course of campaign cards

The General Counsel contends the numerous cards in evidence, but not specifically authenticated by testimony, should be held to be valid and counted toward a showing of majority in each bargaining unit. The total numbers of such cards are 79 and 27 for the hotel and slot units, respectively.

This contention is pressed on several grounds, principal among them that all cards of this combined group were collected and preserved in a regular course of business by the Union, have been in copy form in Respondent's possession since June 1994, without any convincing proof of invalidity being advanced, and may be reliably authenticated by a signature comparison with employment applications and W-4 certificate forms in evidence.

In *I. Taitel & Son*, 119 NLRB 910, 912 (1957), the Board approved a finding of validity to authorization cards obtained in the course of an organizational campaign in the same manner as many specifically identified cards. The Board noted the employer's opportunity to make a signature check, and a fact that all such cards had remained in possession and control of the campaigning labor organization until entered into evidence.

In *Laurels Hotel & Country Club*, 170 NLRB 1140, 1167–1168 (1968), three distinct approaches to validation of authorization cards not testified to by the signer or solicitor were tacitly approved by the Board. One card counted as valid was of an individual on the pertinent payroll used to determine majority status, and evidence showed it to have ''joined the regular flow of the many (111 other authorization cards) into the union agent's hands and on to the Labor Board.'' Three others were validated from testimony of a witness that he completed cards for persons on National Guard duty by telephone proxy (two of them closely related to the witness), and each card was timely dated as well as stamped on the back at the Board's office. The third approach in *Laurels* was a W–4 signature form comparison showing ''exactly'' as the authorization card.

In *Knogo Corp*., 262 NLRB 1346, 1364–1365 (1982), a group of 17 authorization cards had been obtained in the course of an organizational campaign in the same manner as many other traditionally identified cards. However the group of 17 had no directly authenticating testimony to support them, only that they had been returned to a union field representative by employee solicitors or by mail *and* remained in the union's possession until offered into evidence. These circumstances permitted the cards in question to be treated as ''valid designations,'' particularly where the objecting employer had ample opportunity to check signatures against job applications and W–4 forms.

More recently in *Farris Fashions*, 312 NLRB 547, 562 (1993), the administrative law judge's validation of various authorization cards was made because of consistency with ''documentary and other evidence of the organizing campaign.'' The dating of several such authorization cards was particularly treated, and also found consistent with the timespan when the organizing campaign was ''in progress.''

Here the General Counsel has entered in evidence either an employment application or W–4 form for each of the 106 persons in its ''course of campaign'' group. These ''course of campaign'' cards are a portion of the much larger total acquired by the Union during its 5 months of campaigning. Fernandez testified thoroughly and credibly to having had the personal responsibility of maintaining all cards acquired as securely as possible. His testimony is an adequate basis to find, as I do, that the ''course of campaign'' cards were in fact obtained by various solicitations among hotel and slot department employees, and that they take their separate identity from the fact of the General Counsel having no witness to traditionally authenticate them one by one as a condition to admissibility. They do, nevertheless, have every indication of authenticity, and are dated during the particular time period of late January to late April when the Union's campaign was at its most sustained level of activity. Only one of the cards in this group is dated prior to the open house of January 25, this sole exception being a card of Delecia Jones which is dated on January 21 closely in time to the open house.

Given that Respondent did not mount a successful challenge to the apparent validity of any card within the group, and the absence of even a hint that spurious conduct was used in the generation of any card, I find each of the ''course of campaign'' cards to be an authentic document presented after a proper chain of custody was shown. This finding is made after I closely compared the signature on each of the 106 cards to that signature appearing on the pertinent employment application or W–4 exemplar. In every case the authorization card signature is similar to that on the exemplar, and comfortably convincing of such authenticity as to justify it being counted toward the General Counsel's desired showing of majority. This finding comports with Fed-

eral Rules of Evidence (FRE) 901(a) permitting the requirement of authentication to be satisfied by evidence sufficient to show the matter in question is what its proponent claims it to be. Illustrative examples of conforming authentication methods under FRE 901(a) include ''[C]omparison by the trier of fact. . . . with specimens which have been authenticated.'' See *Lott's Electric*, supra, 293 NLRB at 312.

G. *Majority*

1. Hotel unit

The parties stipulated that on April 28 the number of persons employed in job positions considered as inclusive classifications listed in the complaint for the hotel unit was 1020. The basic number of approved authorization cards for the hotel unit is 554, a figure that exceeds numerical majority by 43. In addition I approve the 79 ''course of campaign'' cards applicable to the hotel unit, increasing the number of employees expressing the valid desire for representation by the Steelworkers as of April 28 to 633, for a total majority excess of 122.

2. Slot unit

A comparable stipulation was made by the parties as to the number of persons employed in job positions stated in the complaint for the slot unit, including the position of money runner as amended to be an included occupation of that unit, which was 128. Here the basic number of approved authorization cards is 78, and the augmented number including the 27 ''course of campaign'' cards is 105. This results in a majority showing for the slot unit with numerical excess of 13 and 40, respectively.

H. *Special matters*

1. Board's 10(j) authority and case impact

This record has scant information about proceedings under Section 10(j) that were referred to passingly above. It is known that a Federal district court in Nevada issued injunctive relief on July 29, 1994. It did not provide for an interim bargaining order as requested in the injunction petition. Beyond this what is known consists of scattered references in exhibits pertaining to subpoena matters, and commentary on the proceeding made in posthearing briefs.

On the hearing session of March 20, 1995, Respondent moved to dismiss the complaint on grounds of the Board's participation in 10(j) proceedings. Respondent's argument was that approval from the Board of an injunction petition to be initiated constitutes a violation of fundamental due process by depriving the employer of a later neutral decision maker. The motion to dismiss was denied.

In its posthearing brief Respondent renews this contention, and develops the argument further that the Board necessarily obtained advance knowledge of evidence only from the General Counsel, and prejudged the case. This, in Respondent's view, created a dual role of prosecutor and judge, which precludes the Board from functioning in an unbiased capacity. Respondent includes in its authorities that an impartial decision maker is a constitutional entitlement. *Goldberg v. Kelly*, 397 U.S. 254 (1970), and *Gibson v. Berryhill*, 411 U.S. 564 (1973).

Respondent also relies on *Evans v. International Typographical Union*, 76 F.Supp. 881 (S.D. Ind. 1948), quoting from that opinion the court's conjecture that under a procedure where petitioning authority for 10(j) cases was *not* delegated to Regional Directors, it could be ''reasonable to assume that such prosecutive action and prejudgment on the part of the Board might tend to cast the shadow of partiality on the further and principal proceedings before the Board.'' *Evans*, above at 889. However the Board later commented on *Evans*. In *Alamo Express & Alamo Cartage Co.*, 127 NLRB 1203 (1960), a district court's findings and conclusions in a 10(j) proceeding were argued to be res judicata. The Board quoted from *Evans* as follows:

> When the decision of a district court in a proceeding under Section 10(j) for interlocutory relief is viewed in its relation to the primary proceeding under Section 10(b), it is neither final nor conclusive as to the issues there presented. It is not final because the standard of inquiry in Section 10(j) is the probability of the existence of facts, while the decision of the Board in a 10(b) proceeding must rest upon a full hearing and a measure of proof and inquiry extending beyond the standard of probability. The decision of the district court is not res judicata upon the final hearing of an administrative complaint, because in an application for interlocutory and temporary relief under Section 10(j), the court does not undertake to pass upon the merits of the principal controversy. That lies within the province of the Board. [*Evans*, supra at 1204–1205.]

The Board expressed due respect to the conclusions of the court in the injunction proceeding collateral to *Alamo Express*, but stated, ''[W]e believe it is well established that proceedings under Section 10(j) of the Act have no binding effect *whatever* on the Board in a proceeding on the complaint brought by the General Counsel before the Board.'' (Emphasis added.)

The overall practice of 10(j) litigation is a long-established matter of statutory and regulatory implementation. I have no basis to comment, let alone disturb, what is so fully settled. The Board's annual reports discuss 10(j) litigation each year, with that for 1983 illustratively stating how the agency ''had considerable success before the U.S. District Courts during the fiscal year.'' In *Kaynard v. MMIC, Inc.*, 734 F.2d 950, 954 (2d Cir. 1984), the court referred to ''the intent of Congress in providing in Section 10(j) a swift interim remedy to halt unfair labor practices.'' In *Gottfried v. Frankel*, 818 F.2d 485 (6th Cir. 1987), the court considered an employer's threshold argument as to subject matter jurisdiction in 10(j) proceedings. The court discussed the contrasts in enabling language between Section 10(j) and its companion Section 10(l), noting that legislative history ''sheds little light on the significance of the variance in the language'' between the two statutory provisions, and particularly the contrasted re-

quirement whereby the Board ''must approve'' filing for injunctive relief under Section 10(j).

In a case taken for en banc review, the court in *Miller v. California Pacific Medical Center*, 19 F.3d 449 (9th Cir. 1994), undertook sweeping opinion on criteria and public interest questions while noting a certainty that ''the Board will continue to litigate 10(j) injunctions in district courts

tain holdings into a single conclusion of law that expresses the essense of what has been successfully asserted.

II. LISTING OF CONCLUSIONS OF LAW

1. The Respondent, Flamingo Hilton-Laughlin, is now and at all times material has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, United Steelworkers of America, AFL–CIO–CLC, is now and at all times material has been a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act by:

(a) Changing the health insurance coverage of employees by providing additional health insurance coverage options to its employees; lowering the health insurance premiums required to be paid by its employees; and changing its employees' health insurance coverage by providing an additional health insurance open season period to its employees.

(b) Increasing the wages of its employees retroactively.

(c) Announcing to its employees that it was implementing a complaint resolution procedure.

(d) Changing the scheduling and assignment of its cocktail server employees by instituting a seniority-based shift and assignment policy.

(e) Increasing the guaranteed gratuities of its bell employees.

(f) Maintaining an application review process designed to screen out those applicants for employment whose employment applications evidence the applicant's affiliation with union supporters and/or other indicia of likely support or sympathy for a labor organization.

(g) Soliciting employee complaints and grievances and promising, directly or by implication, to resolve them, increase benefits, and improve terms and conditions of employment if employees rejected the Union as their bargaining representative.

(h) Threatening its employees with violence at the hands of a labor organization other than the Union in an effort to discourage support for the Union.

(i) Creating the impression among its employees that it supports and favors a labor organization other than the Union.

(j) Prohibiting its employees from talking to other employees about the Union.

(k) Interrogating its employees coercively about their union sympathies or activities.

(l) Threatening its employees with the loss of benefits and the reduction of wages if they selected the Union as their bargaining representative.

(m) Threatening its employees with the loss of an announced pay raise if they selected the Union as their bargaining representative.

(n) Threatening its employees with loss of employment opportunities because their photograph or name appeared in a union pamphlet.

(o) Threatening its employees that they would have difficulty resolving work problems with their supervisors if the Union was selected to represent them.

(p) Threatening its employees verbally that they would not be hired by other casino hotel employers in Laughlin because of their union activities.

(q) Informing its employees that they would not be allowed to work until they begin wearing proemployer buttons or replace their prounion buttons with proemployer buttons.

(r) Threatening its employees in writing by implying that other casino hotel employers in Laughlin would blacklist them because of their union activities or support for the Union.

(s) Threatening its employees in writing with loss of future job opportunities by implying that other casino hotel employers in Laughlin would be less likely to hire them because of their union activities or support for the Union.

(t) Threatening its employees verbally that it would blacklist them because of their support for the Union.

(u) Threatening unspecified reprisals against its employees by implying it would be done because of their support for the Union.

(v) Threatening its employees with discharge because of their support for the Union.

(w) Informing its employees that it would be futile for them to support the Union.

4. Respondent has engaged in unfair labor practices in violation of Section 8(a)(3) of the Act by restricting work area movement of its employees in and around the facility.

5. The ''Hotel Unit'' described in the complaint is an appropriate unit for collective bargaining within the meaning of Section 9(b) of the Act.

6. On April 28, the Union represented a majority of the employees in the hotel unit.

7. The ''Slot Unit'' described in the complaint is an appropriate unit for collective bargaining within the meaning of Section 9(b) of the Act.

8. On April 28, the Union represented a majority of the employees in the slot unit.

9. Respondent has not violated the Act as alleged in the complaint, except as specifically found above.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The General Counsel and the Charging Party both argue for the imposition of a bargaining order applicable to each unit of employees. Respondent opposes such a remedy, and as an alternative defense on the assumption that ''all of the unfair labor practices alleged against it'' were to be established.

In general, Respondent makes the point that no ''hallmark'' violations have been alleged, and absent such accusations no egregious violations of Section 8(a)(3) are present to support issuance of a bargaining order. Respondent identifies the categories of hallmark violations that are neither shown nor alleged as (1) discharge or layoff of employees, (2) shutdown, transfer or subcontracting of operations, (3) inequitable discipline of employees, or (4) reduction of employee wages, benefits or hours, all as done in an effort to deter unionization.

The issue of whether to impose a bargaining order is governed by tests established by the Supreme Court in *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). There the Court identified two categories of cases where a bargaining order would be appropriate. ''Category I'' or ''exceptional'' cases

involve unfair labor practices that are so outrageous and pervasive that traditional remedies cannot erase their coercive effect, thereby rendering a fair election impossible.

''Category II'' cases are the ''less extraordinary cases marked by less pervasive practices which nonetheless still have the tendency to undermine majority strength and impede the election processes.'' In cases of the second category, a bargaining order should issue where the Board finds that ''the possibility of erasing the effects of past practices and of ensuring a fair election (or a fair rerun) by the use of traditional remedies, though present, is slight and that employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order . . . .'' *Gissel*, supra, 395 U.S. at 613, 614–615. The General Counsel argues only that Respondent's conduct is ''sufficiently serious'' under the second prong of a *Gissel* category II test, while the Charging Party tacitly also concedes this.

The Board has held that when, as here, a complaint has alleged unfair labor practices ''so serious and substantial'' that a bargaining order is required, it is necessary to examine the nature and pervasiveness of the employer's conduct. In this process the considerations given include ''the number of employees directly affected by the violation, the size of the unit, the extent of dissemination among the work force, and the identity of the perpetrator of the unfair labor practice.'' *FJN Mfg*., 305 NLRB 656, 657 (1991).

Before treating these considerations, I believe it is useful to review certain context of the postpetition time period. In this approximate 3-month span an incessant program of visual communication was carried out by Respondent for the obvious purpose of instilling revulsion of, and disassociation from, both the Union and more fundamentally the feature of collective representation in employment. This is a privilege of an employer under Section 8(c) of the Act which permits expression of views, for there is no direct limit on the aggressiveness, vividness, or rhetoric of the message. It is in this sense that I found no violation in actual video content of the entire series presented by Respondent to repeatedly assembled groups of employees. See *Mediplex of Connecticut, Inc*., 319 NLRB 281, 287–290 (1995).

However the key factor to be weighed on this issue of imposing a bargaining order is the balance involved in whether employer conduct can be erased using traditional remedies. This is in contrast to a sense that the possibility of achieving this is too slight, because effects of the conduct would be more likely to linger on in the minds of employees as a conscious deterrent to future free choice.

I see no reason why the context of a situation may not have gradations, just as with an employer's fundamental conduct in question. The ''outrageous'' and ''less pervasive'' categories of *Gissel* would then seem to have a counterpart in the context from which they are viewed. Here the context is a complex one. The video presentation had balanced features to it, as with fair expression of Section 7 rights and speculation on how collective bargaining might lead to more than employees had before a union.

However it was also fear-inducing, with relentless specters of job loss, wage and benefits loss, and personal adversity from unionizing. I avoid saying ''unecessarily'' relentless, because it is the employer's right to be extravagant, preaching, or tedious in its message. But it is just such characteristics that also affect the context. What went beyond lawful privilege available to Respondent were certain extremes of expression, not in a sense of substance but in a sense of what would most probably be remembered from the exposure.

Generalities rooted in the video series included union-related violence, instances of arbitrary union self-interest, the futility of strike action, the uncertainty of collective-bargaining improvements, and the misuse of dues revenue. Specifics included the image of a working person pinned in a courtroom witness box as a prelude to financial penalty for not striking, and the dramatic statement by Flores during overhead projection of text that a union member's failure to fulfill institutional obligations was an actual ''*crime*.''

I believe these points are legitimate context to a weighing of the pervasiveness created by unfair labor practices. Here and initially the number of employees directly affected by the unfair labor practices was extensive. The health insurance changes were shown to affect a substantial percentage of the employees, the same was true of hourly pay increases made, and the new complaint resolution procedure had no limit at all about employee eligibility.

As to a second factor, the size of the units was large, ordinarily a point permitting the argument that dissipation of effects would be more likely. However here the opposite is true, for the very reason that the violations blanketed both units and did not allow the notion to be present that many members of the units were simply not aware of the conduct. These first two factors are largely embodied in the third factor, because dissemination of conduct throughout practically the entire work force was both intended and carried out by the employer. Notably this included items such as wage and benefit increases of tangible effect on why employees were attracted to the Union in the first place, and the inhibiting threat of blacklisting as sprung on the entire work force by universally distributed memorandum just before the election.

Other specific violations were committed by relatively small groups, and I particularly discount the effects of one-on-one type threats, solicitation, or interrogation as it relates to the application of *Gissel* principles. However what remains is a major amount of conduct which created just the memory in an employee of ordinary prudence and understanding that would strip them of any likelihood that a future vote about representation would be free from the lingering and inhibiting effect of their experiences. Finally, and of great significance to the question, the perpetrator of the major amount of conduct was Kosinski himself, both directly in name as with his blacklisting memorandum and as the person most active in advising, planning, and implementing the overall benefit changes. It is also influential that Sherlock was a key perpetrator, both in his elaborately staged speeches of July 4, and his sporadic involvement with smaller employee groups at earlier times in the campaign.

On a matter separate from ''pervasiveness'' of unfair labor practice conduct, a *Gissel* issue is also affected by special considerations such as the applicant screening also devised by Kosinski. This procedure escaped disclosure during the first 6 months of trial, and there is no indication it would have been revealed but for the disclosures made by Oropeza and Rodriguez after they were each discharged from the human resources department. The Board is sensitive to conduct which a respondent is ''likely to renew,'' particularly when a deep committment to an antiunion position is held and from which there will not likely be a retreat. See *Arkan-*

sas Lighthouse for the Blind, 284 NLRB 1214, 1221 (1987); *Waste Management of Utah*, 310 NLRB 883, 907 (1993). Respondent tainted the bargaining units by employment screening in a manner that cannot be reconstructed. It must bear the consequence of this conduct, both as to unknown probabilities yielding a slightly biased work force to the Union's detriment, and to the possibility that conduct this devious invites the presumption it could readily recur.

From the cumulative evaluation of factors above, I conclude the possibility of erasing embedded effects of Respondent's unfair labor practices is so slight that, on balance, a bargaining order is warranted for each unit. In *Research Federal Credit Union*, 310 NLRB 56, 65 (1993), a bargaining order was accompanied by a finding that the employer violated Section 8(a)(5) even though the complaint did not invoke this section of the Act. The elements of such a finding; an election petition, a majority status showing, and full litigation of the bargaining order issue were present, and considered sufficient to warrant such a finding. However in *Q. I. Motor Express*, 308 NLRB 1267, 1268 (1992), the Board stated that a finding of violation under Section 8(a)(5) is not a sine qua non for a remedial bargaining order and would not add to the case remedy. I believe that is a better avenue to follow here. The complaint not only fails to allege an 8(a)(5) violation, but expressly tracks language of the rationale for a *Gissel*-type bargaining order. I, therefore, refrain from making any finding under Section 8(a)(5) of the Act.

Respondent's arguments that the Board on various occasions withheld impositon of a *Gissel* remedy in situations more flagrant than this have each been considered. In *Fiber Glass Systems*, 278 NLRB 1255 (1986), the single hallmark violation, a ''lone 8(a)(3) discharge,'' was not viewed as tending to have a lasting inhibitory effect on other employees because of peculiar circumstances whereby a denial of reinstatment and a limitation on backpay to the discriminatee was present.

In *Blue Grass Industries*, 287 NLRB 274 (1987), the most coercive conduct, threats of plant closure, were not shown to have been disseminated among employees in the unit. In *M. A. Industries*, 285 NLRB 1140 (1987), the Board was satisfied that its traditional remedies would suffice to offset effects of miscellaneous unfair labor practices, and provide more than a slight possibility of erasing effects of such conduct.

In *Times Wire & Cable Co*., 280 NLRB 19 (1986), employer unfair labor practices were noted to be 5 years old, plus only one intervening one of insufficient seriousness to warrant an imposition of a bargaining order. In *Belcher Towing Co*., 265 NLRB 1258 (1982), a request of the charging party for a bargaining order was summarily denied, with an express point of noting that a showing of majority representation was not present.

In *Christie Electric Corp*., 284 NLRB 740 (1987), the Board discounted ''limited'' 8(a)(3) violations, noted an unlawful no-solicitation/no-distribution rule as more honored in the breach than the observance, and stated that various 8(a)(1) violations were mostly committed by low-level supervisors having little overall impact on the unit at large.

In *Gem Urethane Corp*., 284 NLRB 1349 (1987), the Board dismissed certain recommended findings in a strike context, found unlawfully delayed reinstatement of a group of strikers, and unlawfully denied reinstatement of only one, found certain unlawful verbalisms, but in a situation of difficult comparison held the surviving violations not to be so sufficiently serious as to make a fair rerun election unlikely.

In *Philips Industries*, 295 NLRB 717 (1989), the hallmark discharges were noted as not always mandating a bargaining order, that in the case itself a diluted and more easily dissipated effect was left, and that top managment had not committed any 8(a)(1) violations, but these instead emanated from ''overzealous actions of first-level supervisors'' which would not necessarily be viewed as a company policy. I consider all these cases sufficiently distinguishable, and that Respondent's reliance on them in oppostion to a bargaining order is unavailing.

Respondent also contends that a bargaining order is inappropriate because of (1) the passage of time from any claimed unfair labor practices, (2) the turnover of its employees in recent years, and (3) certain supervisory turnover specified in its brief. As to the first contention, a span of time is always present between unfair labor practices that arguably have such lingering effects as to make a second election unfeasible and the point after contested proceedings when a bargaining order is proposed. The Board has termed such passage of time ''regrettable'' but ''unavoidable,'' and not a sufficient basis to deny a bargaining order. *Quality Aluminum Products*, 278 NLRB 338, 340 (1986). The very nature of this litigation would require extensive time because of its complexity, and I do not believe the time from events in 1993 to the present should affect imposition of a bargaining order.

As to employee turnover the approximate amount in each bargaining unit was 50 percent as of April 1995. Fundamentally the Board considers evidence of such turnover to be irrelevant as concerning factors that govern the issuance of a *Gissel* bargaining order. *Astro Printing Services*, 300 NLRB 1028, 1029 (1990); and *Waste Management*, supra, 310 NLRB at 883. Even assuming still more turnover from April 1995 to the present time, there are several hundred employees remaining in the two units who experienced the influencing unfair labor practices. The facility never closes, and a more than ordinary potential is present for continuing and cross communication among new and longer service employees as well as conversation spanning departmental lines about many happenings of the Union's long campaign. I cannot adopt Respondent's contention that employee turnover is of such significance that a bargaining order would be misplaced.

The Board is also unconvinced that ''management turnover'' affects the validity of a bargaining order. In *Action Auto Stores*, 298 NLRB 875 (1990), it noted that a majority of that employer's management was still in place, with the ones remaining being those responsible for a substantial number of its unfair labor practices. That is essentially the situation here, and the mere fact that Sherlock is now gone has lessened effect when it is known that basic labor relations policies are devised by corporate Hilton executives and not necessarily the property president at some given point in time. As to the departure of Jeff Eaton the complaint allegation naming him is withdrawn, as to the Astemborskis, Sadka, and Downie, their conduct was minor in nature, and while Martin supervised the largest classification of hotel unit employees her solicitation of grievances was a lesser

factor in weighing the impact of unfair labor practices. This final contention is also unavailing to Respondent.

The matter of remedy is affected primarilly by a long-established principle of what renders the possibility of erasing effects of unfair labor practices so slight that a fair second election has become unlikely. In *Teledyne Dental Products Corp*., 210 NLRB 435, 436 (1974), the employer solicited grievances and promised benefits. The Board's opinion stated:

> In essence, we are presented with a situation wherein the [employer] has deliberately embarked upon a course of action designed to convince the employees that their demands will be met through direct dealing with [that employer] and that union representation could in no way be advantageous to them. Obviously such conduct must, of necessity, have a strong coercive effect on the employees' freedom of choice, serving as it does to eliminate, by unlawful means and tactics, the very reason for a union's existence. We can conceive of no more pernicious conduct than that which is calculated to undermine the [u]nion and dissipate its majority while refusing to bargain. Neither is there any conduct which could constitute a greater impairment of employees' basic Section 7 rights under our Act, especially since such conduct by its very nature has a long-lasting, if not permanent, effect on the employees' freedom of choice in selecting or rejecting a bargaining representative.

Here the activity noted in *Teledyne* is more than similar, because of the blacklisting and applicant screening conduct that is present. In the concentrated one industry locale of Laughlin, all such conduct remains a constant reminder among employees as to the many ''long-lasting'' effects of undercutting the Union's appeal, associating the helplessness of being blacklisted with unionism as its operative stigma, and knowing too that the flow of new employees was being artificially manipulated by hiring officials.

The particular prospect of blacklisting was illustrated quite starkly in the credible testimony of Serebrenicoff how after Kosinski's distribution of the ''possibility of blackball'' memorandum, that ''very much so [became] a subject of discussion by employees.'' Serebrenicoff continued her description of the impact this had on colleagues at the property by specifically testifying that she was ''[N]ot very successful'' at allaying concerns among the employees. She hit on the very effect that Respondent's conduct would predictably have by recalling how difficult it is to ''explain away people's fears,'' and that even after her explanation that blackballing should not be allowed ''people remained afraid.''

When considering a bargaining order, the law compels a focus on circumstances existing at the time unfair labor practices were committed. Thus late spring 1993 is that focus, when diverse unlawful conduct by Respondent of enduring impact on employees occurred. For all the discussed reasons traditional remedies are, on balance, of less protection to statutory rights of employees than their once having earnestly expressed a majority desire for representation through authentic authorization cards obtained by scrupulously principled means. See *Skyline Distributors*, 319 NLRB 270 (1995); *Camvac International*, surpa, 288 NLRB at 822–823; *Pembrook Management*, 296 NLRB 1226, 1228 (1989).

The Representation Case

From a total of 21 objections filed, the Union earlier withdrew numbers 12 and 17, and now withdraws 14, 18, 19, and 20. Further, I consider numbers 4, 6, 9, and 15 as insufficiently supported by relevant proof, or so generalized that they fail to state validly objectionable grounds. The remaining objections parallel numerous violations of Section 8(a)(1), and amount to conduct preventing employees from voting free of intimidation in a representation election.

These are Objection 1: soliciting grievances; Objection 2: improving wages and benefits; Objection 3: announcing a ''new grievance procedure''; Objection 5: interrogation; Objection 7: promising improved terms and conditions of employment; Objection 8: informing employees of futility to support the Union; Objection 10: threatening loss of wages and benefits; Objection 11: blacklisting; Objection 13: subjecting Union adherents to disparate treatment; Objection 16: threatening loss of employment; and Objection 21: unlawful conduct affecting the results of the election and interfering with employees' free choice in the election.

These numerous incidents of interference, restraint, or coercion, under Section 7 of the Act constitute as well valid objections to conduct affecting the results of the election. Under established precedent an order that the first election be set aside would be fully warranted. *Dal-Tex Optical Co*., 137 NLRB 1782, 1786–1787 (1962); *College of Mount Saint Vincent*, 316 NLRB 152 (1995). This constitutes my alternative recommendation. The controlling recomendation, however, is that a bargaining order issue as to both units now involved, and my alternative recommendation concerning a rerun election is subordinate to that more appropriate remedy.

Disposition

On these findings of fact and conclusions of law and on the entire record,[2] I issue the following recommended[3]

ORDER

The Respondent, Flamingo Hilton-Laughlin, Laughlin, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Changing the health insurance coverage of employees by providing additional health insurance coverage options to its employees; lowering the health insurance premiums required to be paid by its employees; and changing its employees' health insurance coverage by providing an additional health insurance open-season period to its employees.

(b) Increasing the wages of its employees retroactively, provided that Respondent is not required to withdraw, vary, or abandon any wage increase, features of health insurance coverage, or other benefits it may have granted to employees.

[2] The transcript is corrected as requested by the General Counsel in an unopposed motion.

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) Announcing to its employees that it was implementing a complaint resolution procedure.

(d) Changing the scheduling and assignment of its cocktail server employees by instituting a seniority-based shift and assignment policy.

(e) Increasing the guaranteed gratuities of its bell employees.

(f) Maintaining an application review process designed to screen out those applicants for employment whose employment applications evidence the applicant's affiliation with union supporters and/or other indicia of likely support or sympathy for a labor organization.

(g) Soliciting employee complaints and grievances and promising, directly or by implication, to resolve them, increase benefits, and improve terms and conditions of employment if employees rejected the Union as their bargaining representative.

(h) Threatening its employees with violence at the hands of a labor organization other than the Union in an effort to discourage support for the Union.

(i) Creating the impression among its employees that it supports and favors a labor organization other than the Union.

(j) Prohibiting its employees from talking to other employees about the Union.

(k) Interrogating its employees coercively about their union sympathies or activities.

(l) Threatening its employees with the loss of benefits and the reduction of wages if they selected the Union as their bargaining representative.

(m) Threatening its employees with the loss of an announced pay raise if they selected the Union as their bargaining representative.

(n) Threatening its employees with loss of employment opportunities because their photograph or name appeared in a union pamphlet.

(o) Threatening its employees that they would have difficulty resolving work problems with their supervisors if the Union was selected to represent them.

(p) Threatening its employees verbally that they would not be hired by other casino hotel employers in Laughlin, Nevada, because of their union activities.

(q) Informing its employees that they would not be allowed to work until they begin wearing proemployer buttons or replace their prounion buttons with proemployer buttons.

(r) Threatening its employees in writing by implying that other casino hotel employers in Laughlin, Nevada, would blacklist them because of their union activities or support for the Union.

(s) Threatening its employees in writing with loss of future job opportunities by implying that other casino hotel employers in Laughlin, Nevada, would be less likely to hire them because of their union activities or support for the Union.

(t) Threatening its employees verbally that it would blacklist them because of their support for the Union.

(u) Threatening unspecified reprisals against its employees by implying it would be done because of their support for the Union.

(v) Threatening its employees with discharge because of their support for the Union.

(w) Informing its employees that it would be futile for them to support the Union.

(x) Restricting the work area movement of its employees in and around the facility.

(y) Failing and refusing to recognize and bargain, on request and in good faith with the United Steelworkers of America, AFL–CIO–CLC as the exclusive collective-bargaining representative of its employees in the following appropriate units:

Hotel Unit

All full-time and regular part-time uniformed employees, retail sales employees, and plant clerical employees employed at its facility located at 1900 South Casino Drive, Laughlin, Nevada, in the following departments: housekeeping, food and beverage, warehouse receiving, front desk and group processing, bell, valet parking, retail sales, and cashier, including house attendants, room attendants, custodians, outside custodians, utility clerks in the custodial department, custodial seamstresses, uniform room attendants, shampoo house attendants, food servers, host persons, bus persons, snack bar attendants, banquet set up persons, room service servers, food service cashiers, breaker food service cashiers, bartenders, service bartenders, bar backs, bar porters, cocktail servers, head bakers, bakers, cooks, wheel persons, butchers, carvers, head pantry persons, pantry persons, kitchen runners, kitchen workers, receiving warehouse persons employed in the purchasing department, front desk clerks, senior front desk clerks, group processors, senior group processors, bell persons, baggage handlers, bell captains, bus drivers, valet shift supervisors, valet parking attendants, arcade attendants, and sales associates and stockers employed in the gift shop; *excluding* all casino employees (including cage employees, coin room employees, magic booth employees, slot operations employees, change attendants, change booth attendants, carousel attendants, and dealers), administrative employees, office clerical employees (including PBX employees, reservations employees, secretary to the president of the hotel, secretary to the senior vice president of casino operations, secretary to the assistant casino manager, secretary to the director of slot operations, secretary to the director of food and beverage, secretary to the executive chef, secretary to the beverage manager, secretary to the food manager, secretary to the buffet manager, secretary to the vice president and hotel manager, secretary to the executive assistant manager, secretary to the rooms manager, secretary to the director of property operations, secretary to the manager of retail operations, secretary to the comptroller, secretary to the director of casino marketing, secretary to the director of hotel marketing, secretary to the director of purchasing, secretary to the director of housekeeping, retail operations secretary, and retail operations data clerks), confidential employees, show room employees, human resources department employees, hotel marketing department employees, property operations employees, security employees, surveillance employees, guards and supervisors as defined in the Act (including executive chef, assistant executive chef, sous chefs, beverage manager, assistant beverage managers, executive steward, assistant executive steward, assistant diner managers, steward supervisors, room service manager, ser-

vice captains, slot department manager, assistant slot department manager, slot shift managers, slot first assistant shift managers, slot second assistant shift managers, slot host persons, slot training coordinator, master slot technician, casino manager, assistant casino manager, casino games instructor, casino shift manager, assistant casino shift manager, casino pit bosses, casino floor persons, casino box persons, front desk manager, assistant front office manager, assistant hotel managers, guest service manager, housekeeping director, first assistant housekeeping director, assistant housekeeping directors, custodian training coordinator, housekeeping training coordinator, uniform room manager, assistant uniform room manager, house attendant supervisor, housekeeping supervisors, lead custodial supervisor, custodial supervisors, custodial crew supervisors, lead utility clerk, Lost and Found coordinator, housekeeping schedulers, head valet, housekeeping floor supervisors, reservation room manager, assistant reservation room manager, reservation room supervisors, senior room reservation clerks, PBX manager, PBX supervisors, purchasing manager, buyers, warehouse/receiving supervisor, lead receiving warehouse person, coin room manager, coin room assistant manager, coin room second assistant manager, cage manager, assistant cage manager, cage shift supervisors, cage assistant shift supervisors, main bankers, soft count supervisor, casino marketing director, casino marketing assistant director, casino marketing coordinator, casino marketing manager, casino marketing publicity manager, casino events manager, casino analyst, director of customer service, keno shift manager, keno second persons, keno third persons, poker room shift manager, relief shift managers, race sports keno poker manager, race sports supervisor, race sports supervisor writers, bus program manager, retail operations manager, retail operations assistant manager, retail operations lead supervisor, retail operations shift supervisors, carnival supervisor, general manager of the hotel, hotel manager, management trainees, director of purchasing, purchasing buyers, warehouse supervisor, inventory control supervisor, manager of the Beef Baron, manager of the Alto Villa, banquet coordinator, hotel marketing director, bus program manager and turn-around coordinator).

Slot Unit

All slot department floor persons, money runners, change persons, carousel attendants, booth cashiers, slot mechanics (techs), and slot mechanic (tech) trainees, employed at its Laughlin, Nevada facility, *excluding* all other employees, office clerical employees, guards, and supervisors as defined in the Act.

(z) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as exclusive representative of employees in the units found appropriate herein concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Post at its facility in Laughlin, Nevada, copies of the attached notice marked ''Appendix.''[4] Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. A large number of Respondent's employees are Spanish-speaking, and for this reason the Appendix shall be printed in both English and Spanish. See *Colonial Metal Spinning & Stamping Co.*, 310 NLRB 21 (1993).

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''